

"may" therefor.

The Committee Amendment was read and was adopted.

On motion of Senator Adams and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (31-0)(31-0)

H.B. 1630 (Harrington)--

Senator Harrington offered the following amendment to the bill:

Amend Section 1, H.B. 1630, to read as follows:

"Section 1. There is authorized for creation within the boundaries of the Sabine Pass Independent School District excluding that portion which is located within the Port Arthur Navigation District a conservation and reclamation district to be known as the Sabine Pass Port Authority under the authority of Article XVI, Section 59, of the Texas Constitution."

The amendment was read and was adopted.

On motion of Senator Harrington and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (31-0)(31-0)

VOTE ON FINAL PASSAGE OF SENATE BILL 52 RECONSIDERED

On motion of Senator Adams and by unanimous consent, the vote by which S.B. 52 was finally passed was reconsidered.

Question, Shall S.B. 52 be finally passed?

VOTE ON FINAL PASSAGE OF SENATE BILL 201 RECONSIDERED

On motion of Senator Ogg and by unanimous consent, the vote by which S.B. 201 was finally passed was reconsidered.

Question, Shall S.B. 201 be finally passed?

**CONCLUSION OF SESSION FOR LOCAL AND UNCONTESTED
BILLS CALENDAR**

The Presiding Officer announced that the session for the consideration of the Local and Uncontested Bills Calendar was concluded.

ADJOURNMENT

On motion of Senator Aikin the Senate at 9:47 o'clock a.m. adjourned until 10:00 o'clock a.m. today.

SEVENTY-SIXTH DAY
(Thursday, May 17, 1973)

The Senate met at 10:00 o'clock a.m., pursuant to adjournment, and was

called to order by the President.

The roll was called and the following Senators were present: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

A quorum was announced present.

The Reverend Ed Spivey, First Baptist Church, Mexia, Texas, offered the invocation as follows:

We thank thee Heavenly Father, for the investment of confidence by the people of Texas which has brought these men to such an awesome place of responsibility. Bless their lives, we pray, and help them to be true to their consciences in the face of tremendous economic, political and moral pressures.

Grant thy wisdom and power, that this government of the people, by the people, and for the people shall not perish from the earth. In Christ's Name. Amen.

On motion of Senator Aikin and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

REPORTS OF STANDING COMMITTEES

Senator Brooks submitted the following reports for the Committee on Human Resources:

H.B. 377
H.B. 845
H.J.R. 5 (Amended)
H.B. 1363
H.B. 482
S.B. 168 (Amended)

Senator Sherman submitted the following reports for the Committee on Natural Resources:

H.C.R. 103
H.C.R. 95
H.B. 1496
H.B. 1288
S.B. 184
C.S.S.B. 733 (Read first time)

Senator Moore submitted the following reports for the Committee on State Affairs:

H.B. 703
H.B. 1239
H.B. 1657
H.B. 574
H.J.R. 7 (Amended)
H.B. 177 (Amended)
H.B. 486
H.B. 353
S.B. 653
S.B. 907

S.B. 977
S.B. 752

REPORT OF SELECT COMMITTEE

Senator Harrington submitted the following report:

Austin, Texas
May 16, 1973

Honorable Dolph Briscoe, Governor
Honorable William Hobby, President of the Senate
Honorable Price Daniel, Jr., Speaker of the House of Representatives

Sirs:

We, your Committee appointed pursuant to Senate Concurrent Resolution 6 to select a Poet Laureate for the State of Texas, have selected Mrs. Violette Newton of Beaumont to be Poet Laureate of the State of Texas, to serve from May 15, 1973, to May 15, 1974, and Mrs. Lila Todd O'Niell of Port Arthur to be Poet Laureate of the State of Texas, to serve from May 15, 1974, to May 15, 1975.

The Committee also selected Mrs. Stella Woodall of San Antonio as alternate Poet Laureate for the period of May 15, 1973, to May 15, 1974, and Mr. C. W. Miller of San Antonio as alternate Poet Laureate for the period of May 15, 1974, to May 15, 1975.

Respectfully submitted,

Mark White, Secretary of State
On the Part of the Governor

Senator D. Roy Harrington
Senator Glenn Kothmann
On the Part of the Senate

Representative Pike Powers
Representative Frank Madla
On the part of the House

The report was read and filed with the Secretary of the Senate.

MESSAGE FROM THE HOUSE

Hall of the House of Representatives
Austin, Texas, May 17, 1973

Honorable William P. Hobby
President of The Senate

Sir: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 109, Recalling S.J.R. 8 from Governor.

S.C.R. 110, Requesting suspension of Joint Rule of the House and Senate to take up and consider Senate Bill 778 on Thursday, May 17, 1973.

H.B. 116, A bill to be entitled An Act providing for a duty-free lunch

period for teachers actively engaged in the instruction of public school children, providing funds in the Minimum Foundation Program from implementation of the duty-free lunch period, providing that the duty-free lunch period shall not result in a lengthened school day, and declaring an emergency.

H.B. 492, A bill to be entitled An Act relating to renaming the State Finance Building as the Lyndon Baines Johnson Building; and declaring an emergency.

H.B. 679, A bill to be entitled An Act relating to registration of homesteads for tax purposes; and declaring an emergency.

H.B. 683, A bill to be entitled An Act relating to the creation of the State Medical Education Board; to prescribe its duties; to provide for loans, grants or scholarships to students desiring to study medicine and agreeing to practice in rural areas; defining rural areas and for other purposes.

H.B. 931, A bill to be entitled An Act relating to the authority of the governing board of an institution of higher learning to grant a faculty member a faculty development leave; amending subsection (a), Section 51.105, Texas Education Code, as amended; and declaring an emergency.

H.B. 946, A bill to be entitled An Act amending Chapter 16 of the Texas Education Code; declaring that this Act is not intended to alter or effect other laws or other Chapters of the Texas Education Code; providing the effective date of this Act; declaring the Act to be severable; and declaring an emergency.

H.B. 1037, A bill to be entitled An Act creating the Office of Program Evaluation within the Legislative Budget Board; requiring the Office of Program Evaluation to evaluate all agency, commission, department, school, and institution programs and operations and to make performance audits of these programs and operations; providing for an annual performance report; providing for an assistant director for program evaluation and staff; providing a severability clause; and declaring an emergency.

H.B. 1557, A bill to be entitled An Act relating to the sale and issuance of a patent on certain unpatented Permanent Free School Fund land in Kerr County with a reservation of all materials along with the leasing rights to the state; and declaring an emergency.

DOROTHY HALLMAN

Respectfully submitted,

Chief Clerk, House of Representatives

SENATE BILLS AND RESOLUTION ON FIRST READING

By unanimous consent, the following bills and resolution were introduced, read first time and referred to the Committee indicated:

By Senator Mauzy:

S.B. 986, A bill to be entitled An Act relating to the revisions of the Foundation School Program; amending Chapter 16, Texas Education Code; and declaring an emergency.

To Committee on Education.

By Senator Gammage:

S.B. 987, A bill to be entitled An Act setting the date for certain elections to be held in 1973; and declaring an emergency.

To Committee on Administration.

By Senator Mengden:

S.B. 989, A bill to be entitled An Act ratifying, confirming, approving, and validating all proceedings and actions taken by the board of directors of Ponderosa Forest Utility District, adding or annexing land and all bonds heretofore voted, authorized, approved, sold, or issued by said district, and related matters; providing a nonlitigation clause; providing for severability; and declaring an emergency.

To Committee on Jurisprudence.

By Senator Hightower:

S.C.R. 112, Designating the West Entrance Corridor of the Capitol as the "John Nance Garner Foyer" and placing a bronze bust of Mr. Garner in the corridor, and designating the East Entrance Corridor of the Capitol the "Lyndon Baines Johnson Foyer" and placing a bronze bust of Mr. Johnson in the corridor.

To Committee on Administration.

VOTE ON FINAL PASSAGE OF SENATE JOINT RESOLUTION 8 RECONSIDERED

On motion of Senator Gammage and by unanimous consent, the vote by which the Senate concurred in House amendments to S.J.R. 8 was reconsidered.

Question, Shall the Senate concur in House amendments to S.J.R. 8?

Senator Gammage moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Gammage, Kothmann, Brooks, Longoria and Jones.

RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate after the caption had been read, the following enrolled resolutions:

H.C.R. 188

H.C.R. 163

SENATE BILL 807 WITH HOUSE AMENDMENTS

Senator Gammage called S.B. 807 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

COMMITTEE AMENDMENT NO. 1

Amend Senate Bill 807, by striking all below the enacting clause and substituting the following:

Section 1. Chapter 50, Water Code, is amended by adding Section 50.024 to read as follows:

"Sec. 50.024. DISQUALIFICATION OF MEMBERS OF GOVERNING BOARDS. (a) A person is disqualified from serving as a member of a governing board of a district proposing to provide or actually providing water and sewer

services or either of these services to household users as the principal functions of the district and created by special act of the legislature if:

"(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the governing board of the district, or the manager, engineer, or attorney for the district;

"(2) he is or was within the two years immediately preceding his election or appointment to the board an employee of any developer of property in the district or any district or any director, manager, engineer, or attorney for the district;

"(3) he is serving or had served within the last two years immediately preceding his election or appointment to the board as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district; or any director, manager, engineer, or attorney for the district;

"(4) he is or was within the two years immediately preceding his election or appointment to the board a party to a contract or other agreement with, on retainer to, or providing a service or services to the district or to a developer of property in the district, or any director, manager, engineer, or attorney for the district; or

"(5) he is or was within the two years immediately preceding his election or appointment to the board a partner, associate, employee, or owner of any interest in any firm, partnership, corporation, or joint venture which is or was a party to a contract with, on retainer to, or providing a service or services to the district or to a developer of property in the district;

"(b) Within 60 days after the governing board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the governing board with a person who would not be disqualified.

"(c) Any person who wilfully violates the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000."

Sec. 2. Chapter 51, Water Code, is amended by adding Section 51.0721 to read as follows:

"Sec. 51.0721. DISQUALIFICATION OF MEMBERS OF THE BOARD.

(a) A person is disqualified from serving as a member of the board of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district, if;

"(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the board, or the manager, engineer, or attorney for the district;

"(2) he is or was within two years immediately preceding his election or appointment to the board an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

"(3) he is serving or had served within the last two years immediately preceding his election or appointment to the board as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district; or any director, manager, engineer, or attorney for the district;

"(4) he is or was within the two years immediately preceding his election or appointment to the board a party to a contract or other agreement with, on retainer to, or providing a service or services to the district or to a developer of property in the district; or any director, manager, engineer, or attorney for the district; or

"(5) he is or was within the two years immediately preceding his election or appointment to the board a partner, associate, employee, or owner of any interest in any firm, partnership, corporation, or joint venture which is or was a party to a contract with, on retainer to, or providing a service or services to the district or to a developer of property in the district; or any director, manager, engineer, or attorney for the district;

"(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

"(c) Any person who wilfully violates the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000."

Sec. 3. Chapter 53, Water Code, is amended by adding Section 53.0631 to read as follows:

Sec. 53.0631. DISQUALIFICATION OF MEMBERS OF THE BOARD.

(a) A person is disqualified from serving as a member of the board if:

"(1) he is related within the third degree of affinity or consanguinity to a member of the board or the manager, engineer, or attorney for the district;

"(2) he is or was within two years immediately preceding his election or appointment to the board an employee of any developer of property in the district or any other director, or the manager, engineer, or attorney for the district;

"(3) he is serving or had served within the last two years immediately preceding his election or appointment to the board as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district, or any director, manager, engineer, or attorney for the district;

"(4) he is or was within the two years immediately preceding his election or appointment to the board a party to a contract or other agreement with, on retainer to, or providing a service or services to the district or to a developer of property in the district; or any director, manager, engineer or attorney for the district; or

"(5) he is or was within the two years immediately preceding his election or appointment to the board a partner, associate, employee, or owner of any interest in any firm, partnership, corporation, or joint venture which is or was a party to a contract with, on retainer to, or providing a service or services to the district or to a developer of property in the district, or any director, manager, engineer, or attorney for the district;

"(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of the section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

"(c) Any person who wilfully violates the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000."

Sec. 4. Chapter 54, Water Code, is amended by adding Section 54.1021 to read as follows:

"Sec. 54.1021. DISQUALIFICATION OF MEMBERS OF THE BOARD.

(a) A person is disqualified from serving as a member of the board of a district if:

"(1) he is related within the third degree of affinity or consanguinity to a member of the board or the manager, engineer, or attorney for the district;

"(2) he is or was within the two years immediately preceding his election or appointment an employee of any developer of property in the district or any other director, manager, engineer, or attorney for the district;

"(3) he is serving or had served within the last two years immediately preceding his election or appointment to the board as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district, or any director, manager, engineer, or attorney for the district;

"(4) he is or was within the the two years immediately preceding his election or appointment to the board a party to a contract or other agreement with, or retainer to, or providing a service or services to the district or to a developer of property in the district, or any director, manager, engineer, or attorney for the district; or

"(5) he is or was within the two years immediately preceding his election

or appointment to the board a partner, associate, employee, or owner of any interest in any firm, partnership, corporation, or joint venture which is or was a party to a contract with, on retainer to, or providing a service or services to the district or to a developer of property in the district, or any director, manager, engineer, or attorney for the district.

"(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

"(c) Any person who wilfully violates the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000."

Sec. 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

FLOOR AMENDMENT NO. 1

Amend Committee Amendment No. 1 to S.B. 807 by adding the word "or" at the end of sub-section (2) in section No. 1, Section No. 2,

FLOOR AMENDMENT NO. 2

Amend Committee Amendment No. 1, Senate Bill 807, House Second Printing, as follows:

1. Add a quoted Subsection (d) to quoted Section 50.024 in Section 1 on page 2 to read as follows:

"(d) As used in this section, 'developer of property in the district' means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision of any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto."

2. Add a quoted Subsection (d) to quoted Section 51.0721 in Section 2 on page 4 to read as follows:

"(d) As used in this section, 'developer of property in the district' means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision of any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto."

3. Add a quoted Subsection (d), to quoted Section 53.0631 in Section 3 on page 5 to read as follows:

"(d) As used in this section, 'developer of property in the district' means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto."

4. Add a quoted Subsection (d) to quoted Section 54.1021 in Section 4 on

page 6 to read as follows:

"(d) As used in this section, 'developer of property in the district' means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto."

The House amendments were read.

Senator Gammage moved to concur in House amendments.

The motion prevailed.

SENATE BILL 809 WITH HOUSE AMENDMENT

Senator Gammage called S.B. 809 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

COMMITTEE AMENDMENT NO. 1

Amend Senate Bill No. 809, by striking all below the enacting clause and substituting the following:

Section 1. Chapter 50, Water Code, is amended by adding Section 50.053, to read as follows:

"Sec. 50.053. NOTICE OF BOND SALE. (a) Except for refunding bonds, bonds sold to a state or federal agency, and bonds registered with any federal agency, after any bonds are finally authorized and before they are sold by a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district and created by special act of the legislature, the governing board of the district shall publish an appropriate notice of the sale:

"(1) at least one time not less than 10 days before the date of sale in a newspaper of general circulation which is published in the county or counties in which the district is located; and

"(2) at least one time in one or more recognized financial publications of general circulation in the state as approved by the attorney general.

"(b) If a newspaper publication required by Subdivision (1), Subsection (a), of this section is not published in the county, then notice may be published in any newspaper of general circulation in such county."

Sec. 2. Chapter 51, Water Code, is amended by adding Section 51.4321, to read as follows:

"Sec. 51.4321. NOTICE OF BOND SALE. (a) Except for refunding bonds, bonds sold to a state or federal agency, and bonds registered with a federal agency, after any bonds are finally authorized and before they are sold by a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district, the board shall publish an appropriate notice of the sale:

"(1) at least one time not less than 10 days before the date of sale in a newspaper of general circulation which is published in the county or counties in which the district is located; and

"(2) at least one time in one or more recognized financial publications of general circulation in the state as approved by the attorney general.

"(b) If a newspaper publication required by Subdivision (1), Subsection (a), of this section is not published in the county, then notice may be published

in any newspaper of general circulation in such county."

Sec. 3. Chapter 53, Water Code, is amended by adding Section 53.1791, to read as follows:

"Sec. 53.1791. NOTICE OF BOND SALE. (a) Except for refunding bonds, bonds sold to a state or federal agency, and bonds registered with a federal agency, after any bonds are finally authorized and before they are sold by a district, the board shall publish an appropriate notice of the sale:

"(1) at least one time not less than 10 days before the date of sale in a newspaper of general circulation which is published in the county or counties in which the district is located; and

"(2) at least one time in one or more recognized financial publications of general circulation in the state as approved by the attorney general.

"(b) If a newspaper publication required by Subdivision (1), Subsection (a), of this section is not published in the county, then notice may be published in any newspaper of general circulation in such county."

Sec. 4. Chapter 54, Water Code, is amended by adding Section 54.5121, to read as follows:

"Sec. 54.5121. NOTICE OF BOND SALE. (a) Except for refunding bonds, bonds sold to a state or federal agency, and bonds registered with any federal agency, after any bonds are finally approved and before they are sold by a district, the board shall publish an appropriate notice of the sale:

"(1) at least one time not less than 10 days before the date of sale in a newspaper of general circulation which is published in the county or counties in which the district is located; and

"(2) at least one time in one or more recognized financial publications of general circulation in the state as approved by the attorney general.

"(b) If a newspaper publication required by Subdivision (1), Subsection (a), of this section is not published in the county, then notice may be published in any newspaper of general circulation in such county."

Sec. 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The House amendment was read.

Senator Gammage moved to concur in House amendment.

The motion prevailed.

SENATE BILL 812 WITH HOUSE AMENDMENT

Senator Gammage called S.B. 812 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

COMMITTEE AMENDMENT NO. 1

Amend Senate Bill No. 812 by striking all below the enacting clause and substituting the following:

Section 1. Chapter 50, Water Code, is amended by adding Sections 50.053 and 50.054, to read as follows:

"Sec. 50.053. DISTRICT OFFICE. (a) Each district created by special act of the legislature, proposing to provide or actually providing water and sewer services or either of these services to household users as the principal function of the district, after at least 25 qualified electors are residing in the district, shall maintain a district office located within the

district, and on majority vote of the governing board at a public meeting, may maintain an office outside the district.

"(b) After at least 25 qualified electors are residing in a district, on written request of at least five of these electors, the board shall designate a meeting place within the district. On the failure to designate the location of the meeting place within the district, five electors may petition the commission to designate a location, which may be changed by the board after the next election of members to the board.

"Sec. 50.054. RECORDS. Each district covered by the provisions of Section 50.053 of this code, shall preserve its minutes, contracts, records, notices, accounts, receipts, and records of all kinds or certified copies of all of these in a safe place in the district office located in the district. These minutes, contracts, records, notices, accounts, receipts, and other records are the property of the district and subject to public inspection."

Sec. 2. Chapter 51, Water Code, is amended by adding Sections 51.0941, 51.0951, and 51.0961, to read as follows:

"Sec. 51.0941. DISTRICT OFFICE IN CERTAIN DISTRICTS. After at least 25 qualified electors are residing in the district any district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal function of the district shall maintain a district office within the district, and on majority vote of the board at a public meeting, may maintain an office outside the district."

"Sec. 51.0951. MEETINGS IN CERTAIN DISTRICTS. After at least 25 qualified electors are residing in a district covered by Section 51.0941 of this code, on written request of at least five of these electors, the board shall designate a meeting place within the district. On the failure to designate the location of the meeting place within the district, five electors may petition the commission to designate a location, which may be changed by the board after the next election of members to the board."

"Sec. 51.0961. RECORDS IN CERTAIN DISTRICTS. Any district covered by the provisions of Section 51.0941 of this code shall preserve its minutes, contracts, records, notices, accounts, receipts, and records of all kinds or certified copies of these in a safe place in the district office located in the district. These minutes, contracts, records, notices, accounts, receipts, and other records are the property of the district and subject to public inspection."

Sec. 3. Chapter 53, Water Code, is amended by adding Sections 53.090 and 53.091, to read as follows:

"Sec. 53.090. DISTRICT OFFICE. (a) After at least 25 qualified electors are residing in the district, the district shall have a district office located in the district, and on majority vote of the board at a public hearing may maintain an office outside the district.

"(b) After at least 25 qualified electors are residing in a district, on written request of at least five of these electors, the board shall designate a meeting place within the district. On the failure to designate the location of the meeting place within the district, five electors may petition the commission to designate a location, which may be changed by the board after the next election of members to the board.

"Sec. 53.091. RECORDS. The district shall preserve its minutes, contracts, records, notices, accounts, receipts, and records of all kinds or certified copies of these in a safe place in the district office. These minutes, contracts, records, notices, accounts, receipts, and other records are the property of the district and subject to public inspection."

Sec. 4. Section 54.110, Water Code, is amended to read as follows:

"Sec. 54.110. DISTRICT OFFICE AND MEETING PLACE. (a) After at least 25 qualified electors are residing in a district, the board shall designate, and establish a district office within the district and on majority vote of the board at a public meeting, the district may maintain an office outside the district. The meeting place may be a private residence or office provided that the board of directors in its order establishing the meeting place

declares the same to be a public place and invites the public to attend any meeting of the board.

"(b) After at least 25 qualified electors are residing in a district, on written request of at least five of these electors, the board shall designate a meeting place within the district. On the failure to designate the location of the meeting place within the district, five electors may petition the commission to designate a location, which may be changed by the board after the next election of members to the board.

"(c) If the board of directors establishes a meeting place outside the district, it shall give notice of its location by filing a true copy of the resolution establishing the location of the district office with the commission and also by publishing notice of the location in a newspaper of general circulation in the county or counties in which the district is located. If the location of the meeting place outside the district is changed, notice of the change shall be given in the same manner."

Sec. 5. Subsection (a), Section 54.109, Water Code, is amended to read as follows:

"(a) The board may establish regular meetings to conduct district business and may hold special meetings at other times as the business of the district requires. The board shall hold its meetings within the district unless the board, by a majority vote at a public meeting, votes to hold the meetings outside the district."

Sec. 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The House amendment was read.

Senator Gammage moved to concur in House amendment.

The motion prevailed.

NOTICE OF EXECUTIVE SESSION

Senator McKinnon gave notice that he would move for an Executive Session of the Senate at 10:30 o'clock a.m. tomorrow.

BILLS SIGNED

The President announced the signing in the presence of the Senate after the caption had been read, the following enrolled bills:

S.B. 33	S.B. 435
S.B. 144	S.B. 436
S.B. 268	S.B. 438
S.B. 274	S.B. 439
S.B. 327	S.B. 440
S.B. 419	S.B. 681
S.B. 433	S.B. 775
S.B. 434	

COMMITTEE SUBSTITUTE HOUSE BILL 6 ON SECOND READING

On motion of Senator Herring and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 6, A bill to be entitled An Act relating to the accessibility of information in the custody of certain governmental agencies and bodies; prescribing penalties; and declaring an emergency.

The bill was read second time.

(Senator Kothmann in Chair)

Senator Herring offered the following amendment to the bill:

Amend C.S.H.B. 6, Page 3, by striking Section 3(a)(10) in its entirety.

The amendment was read and was adopted.

Senator Herring offered the following amendment to the bill:

Amend C.S.H.B. 6, Page 4, Section 3(c) by striking the number "15" where it appears at the end of that section and substituting therefor the number "16".

The amendment was read and was adopted.

Senator Herring offered the following amendment to the bill:

Amend Sec. 3, Subsection 14 of C.S.H.B. 6 by adding the words "except information filed in connection with an application or proceeding before any agency."

The amendment was read and was adopted.

Senator Adams offered the following amendment to the bill:

Amend C.S.H.B. 6, Section 9 by adding a new subsection to read:

"(f) The charges for copies of records made by the Texas Department of Public Safety shall be as otherwise provided by law."

The amendment was read.

Question on the adoption of the amendment, "Yeas" and "Nays" were demanded.

The amendment failed of adoption by the following vote: Yeas 9, Nays 22.

Yeas: Adams, Aikin, Andujar, Hightower, Jones, Mauzy, Patman, Snelson and Wolff.

Nays: Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Kothmann, Longoria, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Santiesteban, Schwartz, Sherman, Traeger and Wallace.

Senator Aikin offered the following amendment to the bill:

Amend the Committee Substitute for House Bill 6 as follows:

(1) Strike the period at the conclusion of Subdivision (16), Subsection (a), Section 3, and substitute a semicolon.

(2) Insert a Subdivision (17) to Subsection (a), Section 3, to read as follows:

"(17) the audit working papers of the State Auditor."

The amendment was read and was adopted.

Senator Blanchard offered the following amendment to the bill:

Add a new Sec. 11 to C.S.H.B. 6 and renumber the succeeding Sections accordingly:

"Sec. 11. A bond for payment of costs for the preparation of such public records, or a prepayment in cash of the anticipated costs for the preparation of such records, may be required by the head of the department or agency as a condition precedent to the preparation of such record where the record is unduly costly and its reproduction would cause undue hardship to the department or agency if the costs were not paid."

The amendment was read and was adopted.

Senator Patman offered the following amendment to the bill:

Amend C.S.H.B. 6 by adding a new subsection 15 to Section 6 of said bill to read as follows:

"(15) Information currently regarded by agency policy as open to the public."

The amendment was read and was adopted.

On motion of Senator Herring and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

RECORD OF VOTE

Senator Aikin asked to be recorded as voting "Nay" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 6 ON THIRD READING

Senator Herring moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 6 be placed on its third reading and final passage.

(President in Chair)

The motion prevailed by the following vote: Yeas 30, Nays 1.

Yeas: Adams, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santicsteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

Nays: Aikin.

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1.

Yeas: Adams, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

Nays: Aikin.

HOUSE BILLS ON FIRST READING

The following bills received from the House, were read the first time and referred to the Committee indicated:

H.B. 116, To Committee on Education.
H.B. 492, To Committee on Administration.
H.B. 679, To Committee on State Affairs.
H.B. 683, To Committee on State Affairs.
H.B. 946, To Committee on Education.
H.B. 1557, To Committee on State Affairs.
H.B. 931, To Committee on Administration.
H.B. 1037, To Committee on Administration.

RESOLUTION SIGNED

The President announced the signing in the presence of the Senate after the caption had been read, the following enrolled resolution:

S.C.R. 109

MESSAGE FROM GOVERNOR

The following Message from the Governor was read and filed with the Secretary of the Senate:

Austin, Texas
May 16, 1973

TO THE MEMBERS OF THE SENATE, SIXTY-THIRD LEGISLATURE, REGULAR SESSION:

Today I am returning to the Senate in accordance with the request expressed in S.C.R. 109 Senate Joint Resolution No. 8 for further consideration.

Respectfully submitted,
DOLPH BRISCOE
Governor of Texas

COMMITTEE SUBSTITUTE HOUSE BILL 447 ON SECOND READING

On motion of Senator Wallace and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 447, A bill to be entitled An Act relating to regulation of the manufacture, distribution, possession, and use of certain drugs and controlled substances; prescribing penalties; repealing the Uniform Narcotic Drug Act, as amended (Article 725b, Vernon's Texas Penal Code); Chapter 237, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 725c, Vernon's

Texas Penal Code); Chapter 300; Acts of the 54th Legislature, 1955, as amended (Article 725d, Vernon's Texas Penal Code); and Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code); and declaring an emergency.

The bill was read second time.

Senator Wallace offered the following amendment to the bill:

Amend C.S.H.B. 447 by adding a new Section 5.03 to read as follows and renumbering the present Sections to conform with this change:

"Section 5.03 DESIGNATION FOR FEDERAL FUNDS. The Texas Department of Community Affairs or its designee as provided in this Act is hereby designated as the single state agency to administer, apply for and disperse funds under Public Law 92-255, the 'Drug Abuse Office and Treatment Act of 1972' and is given all powers necessary to receive these funds."

The amendment was read and was adopted.

Senator Wallace offered the following amendment to the bill:

Amend C.S.H.B. 447 by striking all of Sec. 4.04 and substituting in lieu thereof the following:

"Sec. 4.04. POSSESSION OR DELIVERY OF MARIHUANA. (a) Except as authorized in this Act, it is unlawful for any person to knowingly or intentionally possess marihuana. Any person who violates this subsection is guilty of a misdemeanor and upon conviction shall be punished by confinement in jail for a term not to exceed 6 months, by a fine not to exceed \$1,000, or by both.

"(b) Any person who has been convicted of a violation of Subsection (a) of this section and who subsequently knowingly or intentionally possesses marihuana unlawfully is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than 10 years, and in addition to imprisonment, an individual adjudged guilty under this subsection may be punished by a fine not to exceed \$5,000. A court may set aside a judgment or verdict of guilty under this subsection and enter a judgment of guilt and punish a defendant for a misdemeanor punishable by confinement in jail for a term not to exceed one year, by a fine not to exceed \$2,000, or by both, if the court, after considering the gravity and circumstances of the offense committed and the history, character, and rehabilitative needs of the defendant, finds that such judgment and sentence would best serve the ends of justice. When a court is authorized to enter a judgment and sentence for a misdemeanor under this subsection, the court may authorize the prosecuting attorney to prosecute initially for the misdemeanor.

"(c) Except as authorized in this Act, it is unlawful for any person knowingly or intentionally to deliver or possess with intent to deliver marihuana. Any person who violates this subsection is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than 10 years.

"(d) Any person who violates Subsection (c) of this section by delivering one-fourth ounce or less of marihuana without receiving remuneration is guilty of a misdemeanor and shall be punished as provided in Subsection (a) of this section."

The amendment was read.

Senator Mengden offered the following substitute for the pending amendment to the bill:

Amend Section 4.04 in the committee substitute to House Bill No. 447 to read as follows:

"Sec. 4.04. POSSESSION AND DISTRIBUTION OF MARIJUANA. (a) Except as otherwise provided in this Act, a person commits an offense if he knowingly or intentionally possesses marijuana.

"(b) A person who violates Subsection (a) is guilty of a Class C misdemeanor if he has not been convicted previously of an offense under this Act and he possesses one ounce or less of marijuana. In addition or as an alternative, a person convicted under this subsection may be punished by confinement in jail for a term not to exceed seven days.

"(c) A person who violates Subsection (a) is guilty of a felony of the third degree if he has not been convicted previously of an offense under this Act and he possesses more than one ounce of marijuana.

"(d) A person who violates Subsection (a) is guilty of a Class B misdemeanor if he has been convicted previously of a violation of this Act and he possesses one ounce or less of marijuana.

"(e) A person who violates Subsection (a) is guilty of a felony of the second degree if he has been convicted previously of a violation of this Act and he possesses more than one ounce of marijuana.

"(f) A person who violates Subsection (a) is guilty of a Class A misdemeanor if he has been convicted previously of two or more violations of this Act and he possesses one ounce or less of marijuana.

"(g) A person who violates Subsection (a) is guilty of a felony of the first degree if he has been convicted previously of two or more violations of this Act and he possesses more than one ounce of marijuana.

"(h) Except as otherwise provided by this Act, a person commits an offense if he knowingly or intentionally distributes marijuana.

"(i) An offense under Subsection (h) is a felony of the first degree unless the person has been convicted previously of a violation of this Act, in which event the offense shall be punished by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years."

The amendment was read.

(Senator Hightower in Chair)

Senator Gammage offered the following amendment to the substitute for the pending amendment to the bill:

Amend the pending Mengden substitute amendment to the Committee Substitute for H.B. 447 by adding the following language to the end of the last sentence of Subsection (a) of Section 4.04, to read as follows:

"The possession of marijuana shall not be considered a crime involving moral turpitude."

The amendment to the substitute for the pending amendment was read and was adopted.

Question recurring on the adoption of the substitute as amended, "Yeas" and "Nays" were demanded.

The substitute for the pending amendment failed of adoption by the following vote: Yeas 14, Nays 17.

Yeas: Adams, Blanchard, Braecklein, Clower, Creighton, Kothmann, McKinnon, McKnight, Mengden, Moore, Ogg, Patman, Traeger and Wolff.

Nays: Aikin, Andujar, Brooks, Gammage, Harrington, Harris, Herring, Hightower, Jones, Longoria, Mauzy, Meier, Santiesteban, Schwartz, Sherman, Snelson and Wallace.

REASON FOR VOTE

My amendment to provide for penalties for marijuana based on possession of one ounce or less being a misdemeanor and possession of one ounce or more being a felony is a realistic and sensible way to assess marijuana penalties. This amendment would provide increasing penalties for second and third and subsequent convictions but would maintain misdemeanor provisions for possession no matter how many times a person is convicted as long as an individual had less than one ounce in his possession. This amendment recognizes that penalties should increase with the amount of marijuana and with the number of convictions.

MENGDEN

(President in Chair)

Question, Shall the amendment by Senator Wallace be adopted?

MOTION TO NOT CONCUR IN HOUSE AMENDMENTS TO SENATE BILL 253

Senator Moore moved that the Senate do not concur in the House amendments to S.B. 253 but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President announced the appointment of the following conferees on part of the Senate on the bill: Senators Moore, Brooks, Harrington, Ogg and Kothmann.

Senator Patman raised the Point of Order that a motion to not concur in House amendments to S.B. 253 was not in order because the bill had not been returned to the Senate by the House of Representatives.

The President sustained the Point of Order.

VOTE BY WHICH SENATE CONCURRED IN HOUSE AMENDMENTS TO SENATE BILL 807 RECONSIDERED

On motion of Senator Gammage and by unanimous consent, the vote by which the Senate concurred in House amendments to S.B. 807 was reconsidered.

Question, Shall the Senate concur in House amendments to S.B. 807?

Senator Gammage moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 807 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following

conferrees on the part of the Senate on the bill: Senators Gammage, Traeger, Harrington, Wallace and Jones.

RECESS

On motion of Senator Aikin the Senate at 12:10 o'clock p.m. took recess until 2:15 o'clock p.m. today.

After Recess

The President called the Senate to order at 2:15 o'clock p.m. today.

RESOLUTION SIGNED

The President announced the signing in the presence of the Senate after the caption had been read, the following enrolled resolution:

S.C.R. 110

MESSAGE FROM THE HOUSE

Hall of the House of Representatives
Austin, Texas, May 17, 1973

Honorable William P. Hobby
President of the Senate

Sir: I am directed by the House to inform the Senate that the House has passed the following:

The House has concurred in Senate amendments to House Bill 433 by vote of 106 Ayes, 29 Noes and 1 Present-Not voting.

Respectfully submitted,
DOROTHY HALLMAN
Chief Clerk, House of Representatives

**CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 340**

Senator Gammage submitted the following Conference Committee Report:

Austin, Texas
May 16, 1973

Honorable William P. Hobby
President of the Senate

Honorable Price Daniel, Jr.
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on House Bill 340 have met and had same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GAMMAGE
MOORE
LONGORIA
MEIER
WALLACE
On the part of the Senate

JONES
POWERS
NOWLIN
WASHINGTON
COOKE
On the part of the House

The Conference Committee Report was read and filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT
ON SENATE BILL 123**

Senator Gammage submitted the following Conference Committee Report:

Austin, Texas
May 17, 1973

Honorable William P. Hobby
President of the Senate

Honorable Price Daniel, Jr.
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on Senate Bill 123, have met and had same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GAMMAGE
MAUZY
HARRINGTON
ANDUJAR
BRAECKLEIN
On the part of the Senate

ALLEN of HARRIS
GEIGER
WEDDINGTON
On the part of the House

S.B. No. 123,

A BILL

TO BE ENTITLED

An Act providing that a person who is at least 18 years of age has all the rights, privileges, and obligations of a person who is 21 years of age; containing a provision that a custodian of certain property of a minor may elect not to have the provisions of this Act apply to such property; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. The purpose of this Act is to extend all the rights, privileges, and obligations of majority to all persons who are at least 18 years of age. It shall be construed liberally to accomplish that purpose.

Sec. 2. Notwithstanding any statutory or decisional law, or any rule, regulation, or ordinance of this state or of any political subdivision or incorporated city or town of this state, a person who is at least 18 years of age has all the rights, privileges, and obligations of a person who is 21 years of age. A law, rule, regulation, or ordinance which extends a right, privilege, or obligation to a person on the basis of a minimum age of 21, 20, or 19 years shall be interpreted as prescribing a minimum age of 18 years.

It is specifically provided, however, that with respect to property held by a custodian under the Texas Uniform Gifts to Minors Act, as amended (Article 5923-101, Vernon's Texas Civil Statutes), on effective date hereof and the proceeds and reinvestments thereof, the custodian may elect not to have the provisions of this Act apply by so notifying the minor in writing, but such election may be revoked at the election of the custodian.

Sec. 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and filed with the Secretary of the Senate.

**SENATE JOINT RESOLUTION 25
WITH HOUSE AMENDMENT**

Senator Traeger called S.J.R. 25 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amend S.J.R. 25 by striking "1974" on line 18 and insert in lieu thereof "1973".

The House amendment was read.

Senator Traeger moved to concur in House amendment.

The motion prevailed.

SENATE BILL ON FIRST READING

By unanimous consent, the following bill was introduced, read first time and referred to the Committee indicated:

By Senator Ogg:

S.B. 988, A bill to be entitled An Act pertaining to preservation of ballots and records of voting machines where a second election is scheduled to be held in the same county within twenty-one days after another election; amending Section 20 of Article 7.14, Vernon's Texas Election Code; and declaring an emergency.

To Committee on Administration.

**COMMITTEE SUBSTITUTE HOUSE BILL 447
ON SECOND READING**

The Senate resumed consideration of the pending business, same being C.S.H.B. 447 on its second reading and passage to third reading with an amendment by Senator Wallace pending.

Question, Shall the amendment by Senator Wallace be adopted?

Senator Ogg offered the following substitute for the pending amendment to the bill:

Amend Section 4.04 in C.S.H.B. 447 to read as follows:

Sec. 4.04. POSSESSION AND DISTRIBUTION OF MARIJUANA. (a) Except as otherwise provided in this Act, a person commits an offense if he knowingly or intentionally possesses marijuana.

(b) A person who violates Subsection (a) is guilty of a Class C misdemeanor if he has not been convicted previously of an offense under this Act and he possesses four ounces or less of marijuana. In addition or as an alternative, a person convicted under this subsection may be punished by confinement in jail for a term not to exceed seven days.

(c) A person who violates Subsection (a) is guilty of a felony of the third degree if he has not been convicted previously of an offense under this Act and he possesses more than four ounces of marijuana.

(d) A person who violates Subsection (a) is guilty of a Class B misdemeanor if he has been convicted previously of a violation of this Act and he possesses four ounces or less of marijuana.

(e) A person who violates Subsection (a) is guilty of a felony of the second degree if he has been convicted previously of a violation of this Act and he possesses more than four ounces of marijuana.

(f) A person who violates Subsection (a) is guilty of a Class A misdemeanor if he has been convicted previously of two or more violations of this Act and he possesses four ounces or less of marijuana.

(g) A person who violates Subsection (a) is guilty of a felony of the first degree if he has been convicted previously of two or more violations of this Act and he possesses more than four ounces of marijuana.

(h) Except as otherwise provided by this Act, a person commits an offense if he knowingly or intentionally distributes marijuana.

(i) An offense under Subsection (h) is a felony of the first degree unless the person has been convicted previously of a violation of this Act, in which event the offense shall be punished by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years.

The substitute for the pending amendment was read.

Senator Santiesteban offered the following amendment to the substitute for the pending amendment to the bill:

Amend Ogg's amendment by amending the following subsections (h) and (i) to read as follows:

"(h) Except as otherwise provided by this Act, a person commits an offense if he knowingly or intentionally distributes more than one-fourth ounce of marijuana.

"(i) An offense under Subsection (h) is a felony of the third degree unless the person has been convicted previously of a violation of subsection (h), in which event the offense shall be a felony of the second degree."

And further amend Ogg's amendment by adding a new subsection (j) to read

as follows:

"(j) In the case of a person convicted of an offense under subsections (c) or (h) of this section, the court shall set aside the judgment of guilt and enter judgment and sentence the actor for a Class A misdemeanor, if the actor proves to the trier of fact by a preponderance of the evidence at the sentencing hearing that he did not distribute the marijuana for profit or to further commercial distribution, nor possess the marijuana with intent to distribute it for profit or to further commercial distribution."

The amendment to the substitute for the pending amendment was read and was adopted.

Senator Gammage offered the following amendment to the substitute for the pending amendment to the bill:

Amend the Ogg substitute amendment for C.S.H.B. 447 by adding the following language to the end of the last sentence of Subsection (a) of Section 4.04, to read as follows:

"The possession of marijuana shall not be considered a crime involving moral turpitude."

The amendment to the substitute for the pending amendment was read.

Question on the adoption of the amendment to the substitute for the pending amendment, "Yeas" and "Nays" were demanded.

The amendment was adopted by the following vote: Yeas 22, Nays 8.

Yeas: Adams, Andujar, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Jones, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Ogg, Santiesteban, Schwartz, Sherman, Wallace and Wolff.

Nays: Aikin, Blanchard, Braecklein, Hightower, Kothmann, Patman, Snelson and Traeger.

Absent: Moore.

Question recurring on the adoption of the substitute by Senator Ogg for the pending amendment, "Yeas" and "Nays" were demanded.

The substitute for the pending amendment failed of adoption by the following vote: Yeas 10, Nays 19.

Yeas: Braecklein, Clower, Jones, Kothmann, Mengden, Ogg, Patman, Snelson, Traeger and Wolff.

Nays: Adams, Aikin, Andujar, Brooks, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Longoria, Mauzy, McKinnon, McKnight, Meier, Santiesteban, Schwartz, Sherman and Wallace.

Absent: Blanchard and Moore.

Senator Mengden offered the following substitute for the pending amendment to the bill:

Amend C.S.H.B. 447 as follows:

(1) Amend Section 4.04 to read as follows:

Sec. 4.04. POSSESSION OR DISTRIBUTION OF MARIJUANA. (a) Except as authorized in this Act, it is unlawful for any person to knowingly or intentionally possess marijuana. Any person who violates this subsection:

(1) is guilty of a felony if he possesses one ounce or less and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than 10 years, but if a person convicted under this subdivision has not been convicted previously of a violation of any provision of this Act, the court shall suspend imposition of sentence and place the defendant on probation in accordance with the provisions of the Adult Probation and Parole Law for a period of three years;

(2) is guilty of a felony if he possesses more than one ounce and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than life.

(b) Any person who has been convicted of a violation of Subsection (a) of this section and who subsequently knowingly or intentionally possesses marijuana unlawfully is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 10 years or more than life.

(c) Except as authorized in this Act, it is unlawful for any person knowingly or intentionally to distribute or possess with intent to distribute marijuana. Any person who violates this subsection is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than life.

(d) Any person who has been convicted of a violation of Subsection (c) of this section and who subsequently knowingly or intentionally possesses marijuana unlawfully is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 10 years or more than life.

(2) Renumber Sections 4.05 through 4.10 as Sections 4.06 through 4.11 and add a new Section 4.05 to read as follows:

Sec. 4.05. EXPUNCTION OF FIRST SMALL MARIJUANA OFFENSE.

(a) Any person who has been convicted of a violation of Subdivision (1), Subsection (a), Section 4.04, of this Act and placed on probation under the provisions of that subdivision is entitled, after discharge of the probation, to petition the court in which he was convicted for an order expunging any arrest, detention, indictment, trial or other hearing, conviction, probation, discharge, or other proceeding related to that offense. The petition shall include a list of all officials and all agencies or other entities of this state or any political subdivision of this state that the petitioner has reason to believe have any recordings of any occurrences that are subject to the expunction petition.

(b) On receipt of the expunction petition, the court shall set a hearing for the matter, and reasonable notice of the hearing shall be given to the prosecuting attorney responsible for the prosecution of offenses in that court. All public records of proceedings under this section shall be anonymous.

(c) The court shall issue an order expunging any arrest, detention, indictment, trial or other hearing, conviction, probation, discharge, or other proceeding related to the offense if it determines, after hearing, that the petitioner:

(1) was convicted of a violation of Subdivision (1), Subsection (a), Section 4.04, and was placed on probation under the provisions of that subdivision;

(2) has been discharged from the probation;

(3) has not subsequently been convicted of any felony or of any misdemeanor punishable by imprisonment; and

(4) is not presently charged, by indictment or information, with the commission of any felony or any misdemeanor punishable by imprisonment.

(d) The clerk of the court shall send a certified copy of the order to any official and any agency or other entity of this state or of any political subdivision of this state that there is reason to believe has any recordings of

an occurrence ordered expunged. The clerk shall also send a certified copy of the order to any central federal depository of criminal records that there is reason to believe has any recordations of an occurrence ordered expunged, together with an explanation of the meaning and effect of the order and a request that all recordations of the expunged occurrences be removed from its records and returned to the court or, if removal is impracticable, destroyed.

(e) On receipt of an expunction order, an official or an agency or other entity of this state or any political subdivision of this state shall delete all index references to recordations of expunged occurrences and remove from its records all recordations of expunged occurrences and return them to the court or, if removal is impracticable, destroy or obliterate all recordations that identify the petitioner as the subject of an expunged occurrence.

(f) The court shall seal all returned recordations and forward them to the Department of Public Safety, which shall place them in a sealed file available only for the purposes authorized by Subsection (h).

(g) After entry of an expunction order, the expunged conviction shall be vacated, all proceedings related to it shall be dismissed, and except as provided in Subsection (h), all occurrences ordered expunged shall be treated as if they did not occur. Except as provided in Subsection (h), the petitioner and any person who has knowledge of any expunged occurrence by reason of his public office or his employment by an agency or other entity of this state or any political subdivision of this state shall properly reply to all inquiries that the expunged occurrences did not occur and that the expunction proceedings did not occur. No person may be convicted of perjury or otherwise giving a false statement because of failure to acknowledge or denial of an expunged occurrence or an expunction proceeding.

(h) If the petitioner is subsequently indicted, the Department of Public Safety, on inquiry by the court before whom the indictment is pending, shall make the sealed recordations available to the inquiring court, and they may be admitted, in accordance with the rules of evidence, at the sentencing hearing.

(i) Except as authorized by Subsection (h), any person who acquires knowledge of an expunged occurrence while an officer or employee of the state or of any agency or other entity of the state or of any political subdivision of the state by reason of his official position and who knows or should know of the expunction order commits a misdemeanor punishable by imprisonment in jail for not more than one year, by a fine of not more than \$1,000, or by both, if he reveals or otherwise makes available any information about the expunged occurrence or the expunction proceedings to another.

The substitute for the pending amendment was read.

(Senator Andujar in Chair)

Question on the adoption of the substitute by Senator Mengden for the pending amendment to bill, "Yeas" and "Nays" were demanded.

The substitute for the pending amendment failed of adoption by the following vote: Yeas 4, Nays 27.

Yeas: Adams, Hightower, McKnight and Mengden.

Nays: Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Jones, Kothmann, Longoria, Mauzy, McKinnon, Meier, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

REASON FOR VOTE

My amendment to provide that an individual who was convicted for the first time for possession of one ounce or less of marijuana would automatically receive

a suspended sentence and be placed on three years probation is the answer to those that worry that a felony conviction will permanently mar a young person's future. Under the provisions of my amendment all records pertaining to an individual's arrest and conviction would be expunged from his record after he successfully completed three years of probation.

Thus, my amendment would maintain felony penalties for the pusher and repetitious user but would provide that the young person who got caught trying marijuana one time for a lark, or experimentation, would not spend one day in jail, nor pay one cent of fine, or have any record, felony or misdemeanor at all for this offense.

MENGDEN

Senator Mengden offered the following substitute for the pending amendment to the bill:

Amend the quoted Section 4.04 in the Committee Substitute to H.B. 447 to read as follows:

"Sec. 4.04. POSSESSION OR DISTRIBUTION OF MARIJUANA. (a) Except as authorized by law, it is unlawful for any person to knowingly or intentionally possess marijuana. Any person who violates this subsection:

"(1) is guilty of a misdemeanor if he possesses one ounce or less and upon conviction shall be punished by confinement in jail for a term not to exceed six months, by a fine not to exceed \$1,000, or by both;

"(2) is guilty of a felony if he possesses more than one ounce and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years nor more than 10 years, and in addition to imprisonment, an individual adjudged guilty under this subdivision may be punished by a fine not to exceed \$5,000.

"(b) Any person who has been convicted of a violation of Subsection (a) of this section and who subsequently knowingly or intentionally possesses marijuana unlawfully is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than 10 years, and in addition to imprisonment, an individual adjudged guilty under this subsection may be punished by a fine not to exceed \$5,000.

"(c) A court may set aside a judgment or verdict of guilty under Subsection (a)(2) or (b) and enter a judgment of guilt and punish a defendant for a misdemeanor punishable by confinement in jail for a term not to exceed one year, by a fine not to exceed \$2,000, or by both, if the court, after considering the gravity and circumstances of the offense committed and the history, character, and rehabilitative needs of the defendant, finds that such judgment and sentence would best serve the ends of justice.

"(d) Except as authorized in this Act, it is unlawful for any person knowingly or intentionally to distribute or possess with intent to distribute marijuana. Except as provided in Subsections (e) and (f) of this section, any person who violates this subsection is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for any term not less than 2 years nor more than 99 years.

"(e) Any person who violates Subsection (d) of this section by distributing one-fourth ounce or less of marijuana as a gift is guilty of a misdemeanor and shall be punished as provided in Subsection (a)(1) of this section. For purposes of this subsection, 'gift' means delivery without expectation or receipt of money or other thing of value in exchange.

"(f) Any person who violates Subsection (d) of this section by distributing marijuana to a person younger than 17 years of age is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for not less than 5 years or more than 99 years."

The substitute for the pending amendment was read.

Senator Santiesteban raised the Point of Order that the amendment was not germane to the bill.

The Presiding Officer sustained the Point of Order.

REASON FOR AMENDMENT

My amendment to substitute the exact language of the marijuana portion of H.B. 447, as it passed the House, is very crucial. The Senate Committee Substitute for H.B. 447 is much too permissive. In fact, the language of the Senate Committee substitute was offered as a floor amendment in the House and was very badly beaten.

I feel the House approach is a good, sound bill. It reduces penalties slightly for possession but it substantially increases penalties for pushers. The medical and scientific facts clearly substantiate what this bill would do. Marijuana is, in fact, a dangerous substance that can cause permanent brain damage when used regularly. We need to maintain strong penalties against marijuana if our state and nation is to maintain its moral strength. I believe we should reject those who urge us to "turn on and tune out" and to pass a good strong marijuana bill such as is found in this amendment.

MENGDEN

(President in Chair)

Senator Wallace raised the Point of Order that there was unauthorized personnel on the floor.

The President sustained the Point of Order.

Senator Mengden asked unanimous consent that his aide be granted privileges of the floor pending discussion of C.S.H.B. 447.

There was objection.

Senator Mengden then moved that his aide be granted privileges of the floor pending discussion of C.S.H.B. 447.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Wolff.

Nays: Wallace.

Senator Mengden offered the following substitute for the pending amendment to the bill:

Amend the quoted Section 4.04 in C.S.H.B. 447 to read as follows:

"Sec. 4.04. POSSESSION OR DISTRIBUTION OF MARIJUANA. (a) Except as authorized by law, it is unlawful for any person to knowingly or intentionally possess marijuana. Any person who violates this subsection:

"(1) is guilty of a misdemeanor if he possesses two ounces or less and upon conviction shall be punished by confinement in jail for a term not to exceed six months, by a fine not to exceed \$1,000, or by both;

"(2) is guilty of a felony if he possesses more than two ounces and upon

conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years nor more than 10 years, and in addition to imprisonment, an individual adjudged guilty under this subdivision may be punished by a fine not to exceed \$5,000.

"(b) Any person who has been convicted of a violation of Subsection (a) of this section and who subsequently knowingly or intentionally possesses marijuana unlawfully is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than 10 years, and in addition to imprisonment, an individual adjudged guilty under this subsection may be punished by a fine not to exceed \$5,000.

"(c) A court may set aside a judgment or verdict of guilty under Subsection (a)(2) or (b) and enter a judgment of guilt and punish a defendant for a misdemeanor punishable by confinement in jail for a term not to exceed one year, by a fine not to exceed \$2,000, or by both, if the court, after considering the gravity and circumstances of the offense committed and the history, character, and rehabilitative needs of the defendant, finds that such judgment and sentence would best serve the ends of justice.

"(d) Except as authorized in this Act, it is unlawful for any person knowingly or intentionally to distribute or possess with intent to distribute marijuana. Except as provided in Subsections (e) and (f) of this section, any person who violates this subsection is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for any term not less than 2 years nor more than 99 years.

"(e) Any person who violates Subsection (d) of this section by distributing one-fourth ounce or less of marijuana as a gift is guilty of a misdemeanor and shall be punished as provided in Subsection (a)(1) of this section. For purposes of this subsection, 'gift' means delivery without expectation or receipt of money or other thing of value in exchange.

"(f) Any person who violates Subsection (d) of this section by distributing marijuana to a person younger than 17 years of age is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for not less than 5 years or more than 99 years.

The substitute for the pending amendment was read and failed of adoption.

Senator Gammage offered the following amendment to the pending amendment to the bill:

Amend the Wallace amendment to C.S.H.B. 447 by adding the following language to the end of the last sentence of Subsections a, b and d and the end of the last sentence of Subsection (e) of Section 4.04, to read as follows:

"The possession of marihuana shall not be considered a crime involving moral turpitude."

The amendment to the pending amendment was read and was adopted.

Question recurring on the adoption of the amendment by Senator Wallace.

The amendment failed of adoption.

RECORD OF VOTE

Senator Mengden asked to be recorded as voting "Yea" on the adoption of the amendment.

Senator Mengden offered the following amendment to the bill:

Amend Subchapter 4 in the Committee Substitute to H.B. 447 as follows:

(1) In Subsection (b) of Section 4.00, substitute "four" for "three" in line 37, page 12; renumber Subdivisions (1), (2), and (3) on lines 38, 42, and 50, page 12, as Subdivisions (2), (3), and (4); and add a new Subdivision (1) between lines 37 and 38, page 12 to read as follows:

"(1) Capital felony. An individual adjudged guilty of a capital felony shall be punished by death."

(2) Add a new Section 4.02 between lines 43 and 44, page 17, and renumber the existing Section 4.02 and all succeeding sections accordingly. The new Section 4.02 reads as follows:

"Sec. 402 UNLAWFUL IMPORTATION OR WHOLESALE OF NARCOTIC DRUG.

"(a) A person commits an offense if he knowingly or intentionally imports heroin into this state or distributes heroin in this state when he knows he does not have a valid registration under this Act to do so.

"(b) An offense under this section is a capital felony."

The amendment was read.

Senator Wallace raised the Point of Order that the amendment was not germane as the bill does not speak to the importation of drugs.

The President sustained the Point of Order.

Senator Mengden offered the following amendment to the bill:

Amend Subchapter 4 in the Committee Substitute to H.B. 447 as follows:

(1) In Subsection (b) of Section 4.00, substitute "four" for "three" in line 37, page 12; renumber Subdivisions (1), (2), and (3) on lines 38, 42, and 50, page 12, as Subdivisions (2), (3), and (4); and add a new Subdivision (1) between lines 37 and 38, page 12 to read as follows:

"(1) Capital felony. An individual adjudged guilty of a capital felony shall be punished by death."

(2) Add a new Section 4.02 between lines 43 and 44, page 17 and renumber the existing Section 4.02 and all succeeding sections accordingly. The new Section 4.02 reads as follows:

"Sec. 402 UNLAWFUL IMPORTATION OR WHOLESALE OF NARCOTIC DRUG.

"(a) A person commits an offense if he knowingly distributes heroin in this state when he knows he does not have a valid registration under this Act to do so.

"(b) An offense under this section is a capital felony."

The amendment was read.

Question on the adoption of the amendment, "Yeas" and "Nays were demanded.

The amendment failed of adoption by the following vote: Yeas 6, Nays 25.

Yeas: Adams, Andujar, McKnight, Mengden, Moore and Patman.

Nays: Aikin, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, Meier, Ogg, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

REASON FOR VOTE

The primary and most basic responsibility of government is the protection of its citizens. This responsibility assumes even greater paramountcy and urgency at a time when the very fabric of our society is threatened by a mounting crime wave and by the growing incidence of drug usage.

At the same time government and the public must recognize that the gravest danger to our young people today is the spreading menace of drug addiction and that the traffic in drugs is one of the principal sources of the enormous illicit profits fueling organized crime. We must mobilize the resources of government to fight an uncompromising war against those who wax fat and prosperous on the fruits of the degradation, and even murder, of our young.

We must use every bit of persuasion within our power to dam up the flow of drugs into the State of Texas. At the same time we must be prepared to take the strongest possible measures against those who are willing to destroy young lives for profit. We must continue the search for realistic, sound methods of rehabilitating those already infected by drugs, but we must be prepared also to deal swiftly and ruthlessly with the drug traffickers and profiteers who are the cause of the plague.

The wholesalers and smugglers feed gluttonously on human weakness, profit from human degradation and thrive on secrecy and a facade of respectability. The most potent threat to our society today are their enormous profits gained by enslaving more and more of our young on drugs. These merchants of death are an abomination in the sight of man and if we do not destroy them, they will destroy us by destroying our children.

MENGDEN

Senator Mengden offered the following amendment to the bill:

Amend the Committee Substitute to House Bill 447 by striking all of Subsection (i) of Section 4.04 on lines 40 - 46, page 18, and by relettering Subsection (j) as Subsection (i).

The amendment was read and failed of adoption.

RECORD OF VOTE

Senator Mengden asked to be recorded as voting "Yea" on the adoption of the amendment.

REASON FOR VOTE

My amendment to delete the provision allowing an individual possessing any amount of marijuana to be charged as a misdemeanor as long as he claims he is not selling it for commercial purposes clearly makes sense.

This bill, without my amendment, will allow individuals with 50, 100, or even 1,000 pounds of marijuana to receive a misdemeanor conviction. Without my amendment, this bill virtually legalizes marijuana.

Senator Mengden offered the following amendment to the bill:

Amend C.S.H.B. 447 by adding at the end of Section 4.05(a) the phrase, "provided that he has no previous conviction for an offense involving marijuana."

The amendment was read and failed of adoption.

RECORD OF VOTE

Senator Mengden asked to be recorded as voting "Yea" on the adoption of the amendment.

REASON FOR VOTE

My amendment to provide for resentencing for those who have been convicted of a first offense only, will give the individual convicted under the old law a chance for re-sentencing provided that he has not been convicted of another marijuana offense. Reducing the second, third, and subsequent convictions to a misdemeanor is a travesty of justice.

Senator Gammage offered the following amendment to the bill:

Amend Committee Substitute H.B. 447, by adding Sections 4.11, 4.12, and 4.13 at the end of Subchapter 4 to read as follows:

Sec. 4.11. **CONDITIONAL DISCHARGE FOR FIRST OFFENSES.** (a) If any person who has not previously been convicted of an offense under this Act or, subsequent to the effective date of this Act, under any statute of the United States or of any state relating to a substance that is defined by this Act as a controlled substance, is found guilty of a violation of this subchapter after trial or on a plea of guilty, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place him on probation on such reasonable conditions as it may require and for such period as the court may prescribe, except that the probationary period may not exceed two years.

(b) Upon violation of a condition of the probation, the court may enter an adjudication of guilt, pronounce sentence, and punish him accordingly. The court may, in its discretion, dismiss the proceedings against the defendant and discharge him from probation before the expiration of the maximum period prescribed for his probationary period. If during the period of his probation the defendant does not violate any of the conditions of the probation, then upon expiration of the probationary period the court shall discharge him and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without an adjudication of guilt, but a nonpublic record of the proceedings shall be retained by the director solely for use by the courts in determining whether or not, in subsequent proceedings, the person qualifies for conditional discharge under this section.

(c) A discharge or dismissal under this section shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law for conviction of a crime, including any provision for enhancement of punishment for repeat or habitual offenders. There may be only one discharge and dismissal under this section with respect to any person.

(d) This section shall not be construed to provide an exclusive procedure. Any other procedure provided by law relating to suspension of trial or probation may be followed, in the discretion of the trial court.

Sec. 4.12. **EXPUNCTION.** (a) A person convicted of a violation of this subchapter may apply to the sentencing court for an order to expunge from all official records (other than the nonpublic record provided in Section 4.13 of this Act) all recordations relating to his arrest, indictment or information, trial, finding of guilt, probation, sentence if any, and dismissal and discharge pursuant to Section 4.11 of this Act if any. The court shall enter the expunction order if it determines, after hearing, that the applicant was discharged and the proceedings against him were dismissed in accordance with Section 4.11 of this Act.

(b) If a person is acquitted or if a complaint against him is dismissed or an indictment not pressed for a violation of Section 4.04, the court shall order that all official records relating to his arrest, indictment, conviction, continuance, or discharge be expunged.

(c) Any person who has been convicted not more than once of the offense of possession of marijuana under a prior Act of this state may apply to the sentencing court for an order of expunction as provided in Subsection (a) of this section. The court shall enter the order if it determines, after a hearing, that:

(1) the applicant has been resentenced pursuant to the provisions of Section 4.05 of this Act and has been released or has satisfied the new sentence imposed; or

(2) the applicant has completed the term of imprisonment or probation imposed on him. The court may, in its discretion, and with the consent of the applicant, reduce the original term of probation to permit him to become eligible for expunction immediately.

(d) An expunction order shall be in writing and shall direct the appropriate custodians of criminal records:

(1) to expunge and destroy the official and unofficial arrest and other criminal records and files and other documents pertaining to the arrest and prosecution or both; to request insofar as they are able the return of such records as they have made available to federal and other state agencies, and to destroy any returned records on receipt; and

(2) to file with the court within 30 days an affidavit that the records have been expunged and destroyed, together with the court's expunction order and a statement that no copies have been retained. Upon receipt of the affidavit, the court shall seal it, together with the original and all copies of its expunction order, and shall forward the sealed documents to the director for retention as provided in Section 4.13 of this Act.

(e) Except as provided in Section 4.13 of this Act, no expunged arrest or conviction may be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute, license, questionnaire, or any other public or private purpose. The effect of the expunction shall be to restore the person in the contemplation of the law to the status he occupied prior to the arrest and conviction. No person whose records have been ordered expunged may be held thereafter under any provision of law to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his failure to recite or acknowledge an expunged arrest, information or indictment, probation, conviction, dismissal, continuance, expunction, or any other related court proceeding in response to any inquiry made of him.

Sec. 4.13. **NONPUBLIC RECORDS.** (a) The director shall maintain a nonpublic record of all cases discharged and dismissed under Section 4.11 of this Act, and of all cases for which an order of expunction has been granted pursuant to Section 4.12 of this Act.

(b) The nonpublic record shall contain only information sufficient to identify the person and a statement that he has had proceedings against him dismissed pursuant to Section 4.11 of this Act, or that he has had his record expunged pursuant to the provisions of Section 4.12 of this Act. The record shall be maintained solely for the purpose of use by the courts in determining whether or not the person qualifies for the provisions of Section 4.11 or 4.12 of this Act in subsequent proceedings.

(c) Information required by this section shall be forwarded by the district attorney in whose jurisdiction a felony offense was prosecuted or not prosessed, and by the county attorney in whose jurisdiction a misdemeanor offense was prosecuted or dismissed.

(d) Information required by this section shall be used solely for the purposes provided in Subsection (b) of this section and may not be disclosed or used for any other purpose. No person may be permitted to learn of an expunged arrest or prosecution, or of the expunction, either directly or indirectly. Any person, except the individual arrested or prosecuted, who divulges such information in violation of this subsection commits a misdemeanor punishable by confinement in jail for not more than six months, by a fine of not more than \$1,000, or by both.

The amendment was read and was adopted.

Senator Gammage offered the following amendment to the bill:

Amend the Committee Substitute for H.B. 447 by adding the following language to the end of the last sentence of Subsection (c) and the end of the last sentence of Subsection (e) of Section 4.04, to read as follows:

"The possession of marihuana shall not be considered a crime involving moral turpitude."

The amendment was read and was adopted.

RECORD OF VOTE

Senator Blanchard asked to be recorded as voting "Nay" on the adoption of the amendment.

Senator Santiesteban offered the following amendment to the bill:

Amend C.S.H.B. 447, Section 2.05, subsection (d), subdivision (3) by deleting everything after the word "unit", on p. 7, line 35, and substituting therefor the following language: "with a four-fold or greater quantity of an esquinoline alkaloid of opium."

The amendment was read and was adopted.

Senator Santiesteban offered the following amendment to the bill:

Amend C.S.H.B. 447, by striking all of Section 3.02 and substituting in lieu thereof the following:

"Sec. c. RULES. (a) The director may promulgate reasonable rules.

"(b) The director may charge up to \$5 per registrant as a reasonable fee for the costs necessary to administer this Act.

"(c) Those registrants licensed by a state agency shall include the annual registration fee as a part of the license fee to the state agency.

"(d) The director by rule may provide for remittance of registration fees collected by state agencies for the department of public safety."

The amendment was read and was adopted.

Senator Santiesteban offered the following amendment to the bill:

Amend C.S.H.B. 447 by striking all of Section 3.07 and substituting in lieu thereof the following:

"Sec. ---. ORDER FORMS. Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section."

The amendment was read and was adopted.

Senator Meier offered the following amendment to the bill:

Amend C.S.H.B. No. 447 by striking all below the enacting clause and substituting the following:

SUBCHAPTER 1. GENERAL PROVISIONS

Section 1.01. **SHORT TITLE.** This Act may be cited as the "Texas Controlled Substances Act."

Sec. 1.02. **DEFINITIONS.** For the purposes of this Act:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(A) a practitioner (or, in his presence, by his authorized agent), or

(B) the patient or research subject at the direction and in the presence of a practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman when acting in the usual and lawful course of his employment.

(3) "Bureau" means the Bureau of Narcotics and Dangerous Drugs of the United States Department of Justice or its successor agency.

(4) "Commissioner" means the Commissioner of Health of the State Department of Health or his designee.

(5) "Controlled substance" means a drug, substance, or immediate precursor listed in Schedules I through V of this Act.

(6) "Federal Controlled Substances Act" means the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513) or its successor.

(7) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(8) "Deliver" or "delivery" means the actual or constructive transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(9) "Director" means the Director of the Texas Department of Public Safety or his designee.

(10) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner (in the course of professional practice or research), including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery.

(11) "Dispenser" means a person who dispenses.

(12) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(13) "Distributor" means a person who distributes.

(14) "Drug" means:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(C) any substance (other than food) intended to affect the structure or any function of the body of man or animals; and

(D) any substance intended for use as a component of any substance specified in Subdivision (A), (B), or (C) of this subsection. It does not include devices or their components, parts, or accessories.

(15) "Immediate precursor" means a substance which the commissioner has found to be and by rule designates as being a principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture of such controlled substance.

(16) "Manufacture" means the production, preparation, propagation,

compounding, conversion, or processing of a controlled substance other than marihuana, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

(A) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(B) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for delivery.

(17) "Marihuana" means the plant *Cannabis sativa* L., whether growing or not: the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, or its seeds. However, it does not include the resin extracted from any part of such plant or any compound, manufacture, salt, derivative, mixture, or preparation of the resin; nor does it include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(18) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) opium and opiates, and any salt, compound, derivative, or preparation of opium or opiates;

(B) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in Subdivision (A), but not including the isoquinoline alkaloids of opium;

(C) opium poppy and poppy straw; or

(D) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(19) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Section 2.09 of this Act, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(20) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(21) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(22) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(23) "Possession" means actual care, custody, control or management.

(24) "Practitioner" means:

(A) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze or conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state; or

(B) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.

(25) "Production" includes manufacturing, planting, cultivating, growing,

or harvesting of a controlled substance.

(26) "Ultimate user" means a person who has lawfully obtained and possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

SUBCHAPTER 2. STANDARD AND SCHEDULES

Section 2.01. **CONTROLLED SUBSTANCES.** The legislature determines that the substances listed in Schedules I, II, III, IV, and V shall be controlled substances.

Sec. 2.02. **NOMENCLATURE.** The controlled substances listed or to be listed in the schedules in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, or trade name they may be designated.

Sec. 2.03. **SCHEDULE I.** (a) The controlled substances listed in this section are included in Schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Allylprodine;
- (2) Benzethidine;
- (3) Betaprodine;
- (4) Clonitazene;
- (5) Dextrorphan;
- (6) Diampromide;
- (7) Diethylthiambutene;
- (8) Dimenoxadol;
- (9) Dimethylthiambutene;
- (10) Dioxaphetyl butyrate;
- (11) Dipipanone;
- (12) Ethylmethylthiambutene;
- (13) Etonitazene;
- (14) Etixeridine;
- (15) Furethidine;
- (16) Hydroxypethidine;
- (17) Ketobemidone;
- (18) Levophenacymorphan;
- (19) Meprodine;
- (20) Methadol;
- (21) Moramide;
- (22) Morpheridine;
- (23) Noracymethadol;
- (24) Norlevorphanol;
- (25) Normethadone;
- (26) Norpipanone;
- (27) Phenadoxone;
- (28) Phenampromide;
- (29) Phenomorphan;
- (30) Phenoperidine;
- (31) Piritramide;
- (32) Proheptazine;
- (33) Properidine;
- (34) Propiram;
- (35) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;

- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Etorphine;
- (10) Heroin;
- (11) Hydromorphenol;
- (12) Methyldesorphine;
- (13) Methyldihydromorphine;
- (14) Morphine methylbromide;
- (15) Morphine methylsulfonate;
- (16) Morphine-N-Oxide;
- (17) Myrophine;
- (18) Nicocodeine;
- (19) Nicomorphine;
- (20) Normorphine;
- (21) Pholcodine;
- (22) Thebacon.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3, 4-methylenedioxy amphetamine;
- (3) 3,4,5-trimethoxy amphetamine;
- (4) Bufotenine;
- (5) Diethyltryptamine;
- (6) Dimethyltryptamine;
- (7) 4-methyl-2, 5-dimethoxyamphetamine;
- (8) Ibogaine;
- (9) Lysergic acid diethylamide;
- (10) Marihuana;
- (11) Mescaline;
- (12) Peyote;
- (13) N-ethyl-3-piperidyl benzilate;
- (14) N-methyl-3-piperidyl benzilate;
- (15) Psilocybin;
- (16) Psilocyn;

(17) Tetrahydrocannabinols and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

- delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;
- delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;
- delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

Sec. 2.04. SCHEDULE II. (a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, however produced:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, including the following:

- (A) Raw opium;

- (B) Opium extracts;
- (C) Opium fluid extracts;
- (D) Powdered opium;
- (E) Granulated opium;
- (F) Tincture of opium;
- (G) Apomorphine;
- (H) Codeine;
- (I) Ethylmorphine;
- (J) Hydrocodone;
- (K) Hydromorphone;
- (L) Metopon;
- (M) Morphine;
- (N) Oxycodone;
- (O) Oxymorphone;
- (P) Thebaine;

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Bezitramide;
- (4) Dihydrocodeine;
- (5) Diphenoxylate;
- (6) Fentanyl;
- (7) Isomethadone;
- (8) Levomethorphan;
- (9) Levorphanol;
- (10) Metazocine;
- (11) Methadone;
- (12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;
- (13) Moramide-Intermediate, 2-methyl-3-morpholino-1,1-diphenyl-propane-carboxylic acid;
- (14) Pethidine;
- (15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (18) Phenazocine;
- (19) Piminodine;
- (20) Racemethorphan;
- (21) Racemorphan.

(d) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (1) amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) methamphetamine, including its salts, isomers, and salts of isomers;

- (3) methylphenidate and its salts; and
- (4) phenmetrazine and its salts.
- (e) Methaqualone.

Sec. 2.05. SCHEDULE III. (a) The controlled substances listed in this section are included in Schedule III.

(b) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

- (2) Chlorhexadol;
- (3) Glutethimide;
- (4) Lysergic acid;
- (5) Lysergic acid amide;
- (6) Methypylon;
- (7) Phencyclidine;
- (8) Sulfondiethylmethane;
- (9) Sulfonethylmethane;
- (10) Sulfonmethane.
- (c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

(7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture, or preparation containing any stimulant listed in Subsection (d) of Section 2.04 or depressant substance listed in Subsection (b) of this section is excepted from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

Sec. 2.06. SCHEDULE IV. (a) The controlled substances listed in this section are included in Schedule IV.

(b) Any material, compound, mixture, or preparation which contains any

quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Barbitol;
- (2) Chloral betaine;
- (3) Chloral hydrate;
- (4) Ethchlorvynol;
- (5) Ethinamate;
- (6) Methohexital;
- (7) Meprobamate;
- (8) Methylphenobarbital;
- (9) Paraldehyde;
- (10) Petrichloral;
- (11) Phenobarbital.

(c) Any compound, mixture, or preparation containing any depressant substance listed in Subsection (b) is excepted from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

Sec. 2.07. SCHEDULE V. (a) The controlled substances listed in this section are included in Schedule V.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;
- (2) not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
- (3) not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
- (4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- (5) not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams.

Sec. 2.08. EXCLUSION FROM SCHEDULE. A nonnarcotic substance is excluded from Schedules I through V if the substance may lawfully be sold over the counter without a prescription, under the Federal Food, Drug, and Cosmetic Act and the commissioner shall have no power to include a nonnarcotic substance from schedules I through V if the substance may lawfully be sold over-the-counter without a prescription under the Federal Food, Drug, and Cosmetic Act.

Sec. 2.09. AUTHORITY TO CONTROL. (a) The legislature, under the directions hereinafter expressed, delegates to the commissioner with approval of the State Board of Health the power to add other substances to the above schedules so that these substances become controlled substances under this Act. The commissioner shall not add any substance to the above schedules if the substance has been deleted from the schedules by the legislature, or sought to be added to the schedules by the legislature but failed to pass when considered by a quorum of either house. The commissioner shall have no authority to extend scheduling to distilled spirits, wine, malt beverages, or tobacco.

(b) In making a determination regarding a substance, the commissioner shall consider the following:

- (1) the actual or relative potential for abuse;
- (2) the scientific evidence of its pharmacological effect, if known;
- (3) the state of current scientific knowledge regarding the substance;
- (4) the history and current pattern of abuse;
- (5) the scope, duration, and significance of abuse;

(6) the risk to the public health;
(7) the potential of the substance to produce psychic or physiological dependence liability; and

(8) whether the substance is an immediate precursor of a substance already controlled under this Act.

(c) After considering the factors enumerated in Subsection (b), the commissioner shall make findings with respect thereto and issue a rule controlling the substance if he finds the substance has a potential for abuse.

(d) If the commissioner designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(e) If any substance is designated as a controlled substance under federal law and notice thereof is given to the commissioner, the commissioner shall similarly control the substance under this Act after the expiration of 30 days from publication in the Federal Register of a final order designating a substance as a controlled substance unless within that 30 day period the commissioner objects to inclusion. In that case, the commissioner shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the commissioner shall publish his decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, control as to that particular substance under this Act is stayed until the commissioner publishes his decision.

The commissioner, in making his decision as to which schedule a controlled substance shall be assigned, shall perform the tests enumerated in Sections 2.10 through 2.14.

Sec. 2.10. SCHEDULE I TESTS. The commissioner shall place a substance in Schedule I if he finds that:

- (1) the substance has high potential for abuse; and
- (2) the substance has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

Sec. 2.11. SCHEDULE II TESTS. The commissioner shall place a substance in Schedule II if he finds that:

- (1) the substance has high potential for abuse;
- (2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (3) abuse of the substance may lead to severe psychological or physical dependence.

Sec. 2.12. SCHEDULE III TESTS. The commissioner shall place a substance in Schedule III if he finds that:

- (1) the substance has a potential for abuse less than the substances listed in Schedules I and II;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

Sec. 2.13. SCHEDULE IV TESTS. The commissioner shall place a substance in Schedule IV if he finds that:

- (1) the substance has a low potential for abuse relative to substances in Schedule III;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

Sec. 2.14. SCHEDULE V TESTS. The commissioner shall place a substance in Schedule V if he finds that:

- (1) the substance has low potential for abuse relative to the controlled substances listed in Schedule IV;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) the substance may lead to limited physical dependence or psychological

dependence liability relative to the controlled substances listed in Schedule IV.

Sec. 2.15. ADDITIONS TO SCHEDULE: NOTICE AND HEARING. Each addition made by the commissioner in a schedule under Subchapter 2 of this Act, except pursuant to Section 2.09(c), must be preceded by a public hearing held by the commissioner in Austin following publication of notice in at least three newspapers of general circulation in this state. The notice shall state the time and place of the hearing, which must be at least 30 days but not more than 60 days after the date of the publication, and the substance of the proposed addition.

Sec. 2.16. REPUBLISHING OF SCHEDULES. The commissioner shall republish the schedules semiannually for two years from the effective date of this Act, and thereafter annually, reflecting the changes, if any, made in the schedules. The commissioner shall publish the schedules by filing a certified copy with the secretary of state.

Sec. 2.17. DANGEROUS DRUGS. The following substances are dangerous drugs regulated by the provisions of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code):

- (1) tranquilizers;
- (2) procaine, its salts, derivatives, or compounds or mixtures thereof;
- (3) any substance that bears the legend: Caution: federal law prohibits dispensing without prescription; or the legend: Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian;
- (4) phendimetrazine, its salts, derivatives, or compounds or mixtures thereof;
- (5) pentazocine, its salts, derivatives, or compounds or mixtures thereof.

SUBCHAPTER 3. REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES

Sec. 3.01. REGISTRATION REQUIREMENTS. (a) Every person who manufactures, distributes, analyzes, or dispenses any controlled substance within this state must possess a valid registration. Registrations must be obtained annually from the director in accordance with rules promulgated by him under Section 3.02.

(b) Persons registered by the director under this Act to manufacture, distribute, dispense, analyze, or conduct research with controlled substances may possess, manufacture, distribute, dispense, analyze, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this Act.

(c) No registration shall be issued without a signed consent form executed by the applicant granting the director or his designee the right to inspect the controlled premises as defined in Subchapter 5 of this Act.

(d) The following persons need not register and may lawfully possess controlled substances under this Act:

- (1) an agent or employee of any registered manufacturer, distributor, analyzer, or dispenser of any controlled substance if he is acting in the usual course of his business or employment;
- (2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment; or
- (3) an ultimate user, as that term is defined herein, or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, dispenses, analyzes, or possesses controlled substances.

(f) The director may inspect the establishment of an applicant for registration in accordance with this Act.

Sec. 3.02. RULES. (a) The director may promulgate reasonable rules.

(b) The director may charge up to \$5 per registrant as a reasonable fee for the costs necessary to administer this Act.

(c) Those registrants licensed by a state agency shall include the annual registration fee as a part of the license fee to the state agency.

(d) The director by rule may provide for remittance of registration fees collected by state agencies for the department of public safety.

Sec. 3.03. **REGISTRATION.** (a) The director shall register an applicant to manufacture or distribute or analyze controlled substances included in Schedules II through V, if:

(1) the applicant is registered pursuant to the Federal Controlled Substances Act; and

(2) the applicant has made proper application and paid the applicable fee.

(b) The director shall register an applicant to dispense any controlled substances in Schedules II through V or to conduct research with controlled substances in Schedules II through V, if:

(1) the applicant is a practitioner licensed under the laws of this state; and

(2) the applicant has made proper application and paid the applicable fee.

(c) The director shall not require separate registration under this subchapter for a practitioner engaged in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this subchapter in another capacity. Practitioners registered under federal law to conduct research with or analyze Schedule I substances may conduct research with or analyze Schedule I substances within this state upon furnishing the director evidence of that federal registration.

Sec. 3.04. **GROUND FOR REVOCATION AND SUSPENSION.** (a) A registration under Section 3.03 to manufacture, distribute, analyze, or dispense a controlled substance may be suspended or revoked in accordance with this Act upon a finding that the registrant:

(1) has furnished false or fraudulent material information in any application filed under this Act;

(2) has been convicted of an offense under any state or federal law relating to any controlled substance or convicted of any felony or any misdemeanor involving moral turpitude;

(3) has had his registration under the Federal Controlled Substances Act suspended or revoked to manufacture, distribute, analyze, or dispense controlled substances;

(4) has had his practitioner's license under the laws of this state suspended or revoked;

(5) has failed to establish and maintain effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels as provided by federal regulations or laws now in effect or hereafter promulgated; or

(6) has willfully failed to maintain records required to be kept or has willfully or unreasonably refused to allow an inspection authorized by this Act.

(b) The revocation or suspension of a registration may be limited to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If a registration is suspended or revoked, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state as provided under Section 5.04 of this Act.

(d) The purpose of this Act being to promote the public health and welfare by the control of the illegal drug traffic, the operation of any registrant in violation of the regulations specified in this section is hereby declared to be a public nuisance, and the director may apply to any court of competent jurisdiction for and may obtain an injunction suspending the

registration of the offender.

(e) The Rules of Civil Procedure shall govern proceedings under this section except when in conflict herewith.

(f) The director shall promptly notify the bureau and state agencies of all orders suspending or revoking registration and all forfeitures of controlled substances.

Sec. 3.05. PROCEDURE FOR SUSPENSION AND REVOCATION. (a) A registration under this Act may be revoked or suspended for cause set forth in Section 3.04 by any district court of this state. The attorney representing the state in the various district courts shall have the authority, and it shall be his duty, to file and prosecute appropriate judicial proceedings for the suspension or revocation of a registrant under this Act upon presentation of competent evidence by the director. A proceeding under this section may be maintained in the county of residence of the registrant, in the county where the registrant maintains a place of business or practice, or in the county in which a wrongful act under Section 3.04 was committed.

(b) The petition shall be sufficient if it contains substantially the following requisites:

(1) the petitioner shall be "The State of Texas";

(2) it shall be directed to the registrant whose license is sought to be revoked or suspended;

(3) it shall contain a short statement of the cause of action sufficient to give notice of the grounds upon which revocation or suspension of the registration is sought;

(4) it shall ask for a revocation or suspension of the registration; and

(5) it shall be signed and verified by the director.

Sec. 3.06. RECORDS OF REGISTRANTS. Persons registered to manufacture, distribute, analyze, or dispense controlled substances under this Act shall keep records and maintain inventories in conformance with recordkeeping and inventory requirements of federal law and with any additional rules the director issues.

Sec. 3.07. ORDER FORMS. Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

Sec. 3.08. PRESCRIPTIONS. (a) No controlled substance in Schedule II may be dispensed without the written prescription of a practitioner, except when dispensed directly to an ultimate user by a practitioner, other than a pharmacy.

(b) In emergency situations, as defined by rule of the director, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing by the pharmacy and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of Section 3.06. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly to an ultimate user by a practitioner, other than a pharmacy, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(e) No prescription for narcotic drugs shall be filled after the second day the prescription was issued.

SUBCHAPTER 4. OFFENSES AND PENALTIES

Section 4.01. UNLAWFUL MANUFACTURE OR DELIVERY OF CONTROLLED SUBSTANCES. (a) Except as authorized in this Act, it is unlawful for any person to knowingly or intentionally manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.

(b) Any person who violates this section with respect to:

(1) a controlled substance classified in Schedule I or II that is a narcotic drug or methamphetamine or lysergic acid diethylamide is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for life or for a term of not less than 5 years or more than 99 years;

(2) any other controlled substance classified in Schedule I, II, or III, except as provided in Section 4.03, is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than 20 years, and in addition to imprisonment, an individual adjudged guilty under this subdivision may be punished by a fine not to exceed \$10,000;

(3) a controlled substance classified in Schedule IV is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than 10 years, and in addition to imprisonment, an individual adjudged guilty under this subdivision may be punished by a fine not to exceed \$5,000;

(4) a controlled substance classified in Schedule V is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000, by confinement in jail for a term not to exceed 6 months, or by both.

(c) Subsequent offense conviction under Section 4.01(a) of this Act for all substances in Schedule I shall be punishable by life imprisonment. Any person convicted under this section shall not be released from confinement until a date 20 years subsequent to the date such sentence commenced.

(a) Except as authorized in this Act, it is unlawful for any person to knowingly or intentionally possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice.

(b) Any person who violates this section with respect to:

(1) a controlled substance classified in Schedule I or II that is a narcotic drug is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than 99 years;

(2) any other controlled substance classified in Schedule I, except as provided in Section 4.03, or any methamphetamine or its salts, isomers, or salts of isomers is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than 10 years, and in addition to imprisonment, an individual adjudged guilty under this subdivision may be punished by a fine not to exceed \$5,000; or

(3) any other controlled substance classified in Schedule II, III, or IV is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$3,000, by confinement in jail for a term not to exceed 2 years, or by both.

Sec. 4.03. POSSESSION OR DELIVERY OF MARIHUANA. (a) Except as authorized in this Act, it is unlawful for any person to knowingly or intentionally possess marihuana. A person who violates this subsection:

(1) is guilty of a misdemeanor if he possesses a usable quantity not in excess of four ounces and upon conviction shall be punished by confinement in jail for a term not to exceed seven days, by a fine not to exceed \$200, or by both;

(2) is guilty of a misdemeanor if he possesses more than four ounces but less than eight ounces and upon conviction shall be punished by confinement in jail for a term not to exceed six months, by a fine not to exceed \$1,000, or by both;

(3) is guilty of a felony if he possesses eight ounces or more and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than 10 years, and in addition to imprisonment, he may be punished by a fine not to exceed \$5,000.

(b) Except as authorized in this Act, it is unlawful for any person knowingly or intentionally to deliver marihuana. Except as provided in Subsection (c) of this section, a person who violates this subsection is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than 10 years, and in addition to imprisonment, an individual adjudged guilty under this subsection may be punished by a fine not to exceed \$5,000.

(c) A person who violates Subsection (b) of this section by delivering one-fourth ounce or less of marihuana without receiving remuneration is guilty of a misdemeanor and upon conviction shall be punished as provided in Subsection (a)(1) of this section.

(d) In the case of a person convicted of an offense under Subsection (a)(3) or (b) of this section, the court shall set aside the judgment of guilt and enter judgment and sentence the actor for a misdemeanor punishable by confinement in jail for a term not to exceed one year, by a fine not to exceed \$2,000, or by both, if the actor proves to the trier of fact by a preponderance of evidence at the sentencing hearing that he did not distribute nor possess with intent to distribute the marihuana for profit or to further commercial distribution.

Sec. 4.04. COMMERCIAL OFFENSES. (a) It is unlawful for any person:

(1) who is a practitioner knowingly or intentionally to distribute or dispense a controlled substance in violation of Section 3.08;

(2) who is a registrant knowingly or intentionally to manufacture a controlled substance not authorized by his registration or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other person;

(3) to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this Act; or

(4) to refuse an entry into any premises for any inspection authorized by this Act.

(b) Any person who violates this section is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than 10 years. In addition to imprisonment, an individual adjudged guilty under this section may be punished by a fine not to exceed \$5,000.

Sec. 4.05. FRAUD OFFENSES. (a) It is unlawful for any person knowingly or intentionally:

(1) to distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by Section 3.07, of this Act;

(2) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge; or

(4) to furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this Act, or any record required to be kept by this Act.

(b) Any person who violates this section with respect to:

(1) a controlled substance classified in Schedule I or II, is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than 20 years;

(2) a controlled substance classified in Schedule III, is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than 10 years. In addition to imprisonment an individual adjudged guilty under this paragraph may be punished by a fine not to exceed \$5,000;

(3) a controlled substance classified in Schedule IV is guilty of a

misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000, by confinement in jail for a term not to exceed 6 months, or by both.

Sec. 4.06. **PENALTIES UNDER OTHER LAWS.** Any penalty imposed for violation of this Act is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

Sec. 4.07. **POSSESSION OF CONTROLLED SUBSTANCE PARAPHERNALIA.** A person, except a practitioner or a person acting under his direction, who possesses a hypodermic syringe, needle, or other instrument with intent to use it for administration by subcutaneous injection in a human being of any controlled substance is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$3,000, by confinement in jail for a term not to exceed 2 years, or by both.

Sec. 4.08. **PEYOTE EXEMPTION.** The provisions of this Act relating to the possession and distribution of peyote shall not apply to the use of peyote in bona fide religious ceremonies of the Native American Church. However, persons who supply the substance to the church are required to register and maintain appropriate records of receipts and disbursements in accordance with rules promulgated by the director. The exemption granted hereunder to members of the Native American Church shall have no application to any member with less than 25 percent Indian blood.

Sec. 4.09. **RESENTENCING.** (a) Any person who has been convicted of the offense of possession of marihuana prior to the effective date of this Act may petition the district court in which he was convicted for resentencing in accordance with the provisions of Section 4.03(a)(1) or (2) of this Act whether he is presently serving a sentence, is on probation or parole, or has been discharged from the sentence.

(b) On receipt of the petition, the district court shall notify the appropriate prosecuting official and shall set the matter for a hearing within ninety days.

(c) At the hearing the district court shall review the record of the prior conviction and shall have the jurisdictional authority to try the defendant for a felony or a misdemeanor. The court shall resentence the petitioner in accordance with the appropriate provision of Section 4.03(a)(1) or (2) and shall grant him credit for all times served on the original sentence prior to the resentencing hearing.

(d) If the time served on the original sentence exceeds the revised sentence imposed by the court under the appropriate provision of Section 4.03(a)(1) or (2), the court shall order the petitioner discharged.

(e) In no event may resentencing under this section lengthen the petitioner's sentence or require him to pay an additional fine.

(f) Nothing in this section shall be construed to authorize the release of a person who is serving concurrent sentences for two or more offenses, if after resentencing such person still has time remaining to be served on a concurrent sentence.

(g) Nothing in this section shall be construed as denying a defendant those remedies provided in Article 48.01, Code of Criminal Procedure, Vernon's Texas Statutes Annotated.

SUBCHAPTER 5. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

Section 5.01. **INSPECTIONS.** (a) As used in this section, the term "controlled premises" means:

(1) places where original or other records or documents required under this Act are kept or required to be kept; and

(2) places, including factories, warehouses, or other establishments, and conveyances, where persons registered under this Act may lawfully hold, manufacture, or distribute, dispense, administer, possess, or otherwise dispose of controlled substances.

(b) For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under this Act and otherwise facilitating the carrying out of his functions under this Act, the director is authorized, in accordance with this section, to enter controlled

premises and to conduct inspections thereof, and of the things specified in this section, relevant to those functions.

(c) Inspections under Subsection (b) of this section shall be carried out through officers or employees designated by the director. Any such officer or employee shall have the right to enter premises and conduct such inspection at reasonable times upon stating his purpose and presenting to the owner, operator, or agent in charge of the premises appropriate credentials and written notice of his inspection authority.

(d) An officer or employee of the director shall have the right to:

(1) inspect and copy records, reports, and other documents required to be kept or made under this Act;

(2) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished drugs and other substances or materials, containers, and labeling found therein, and except as provided in Subsection (e) of this section, all other things therein including records, files, papers, processes, controls, and facilities appropriate for verification of the records, reports, and documents required to be kept under this Act or otherwise bearing on the provisions of this Act;

(3) examine and inventory any stock of any controlled substance therein and obtain samples of any such substance; and

(4) examine any hypodermic syringe, needle, pipe, or other instrument, device, or contrivance, equipment, control, container, label, or facility relating to possible violation of this Act or any material used, to be used, or capable of use in diluting or adulterating a controlled substance.

(e) Except when the owner, operator, or agent in charge of the controlled premises consents in writing, no inspection authorized by this section shall extend to:

(1) financial data;

(2) sales data other than shipment data; or

(3) pricing data.

(a) The director shall cooperate with federal and state agencies in discharging his responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, he may:

(1) arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) cooperate and coordinate in training programs concerning controlled substances law enforcement at local and state levels;

(3) cooperate with the bureau and state agencies by establishing a centralized unit to accept, catalog, file, and collect statistics, including records on drug-dependent persons and other controlled substance law offenders within this state, and make the information available for federal, state, and local law enforcement purposes, except that he may not furnish the name or identity of a patient or research subject whose identity could not be obtained under Subsection (c) of this section; and

(4) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information, and evidence received from the bureau and state agencies relating to the regulatory functions of this Act, including results of inspections conducted by it may be relied and acted upon by the director in the exercise of his regulatory functions under this Act.

(c) A practitioner engaged in authorized medical practice or research may not be required or compelled to furnish the name or identity of a patient or research subject to the department of public safety, the director of the State Program on Drug Abuse, or to any other agency, public official, or law enforcement officer, and a practitioner may not be compelled in any state or local civil, criminal, administrative, legislative, or other proceeding to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

Sec. 5.03. FORFEITURES. (a) The following are subject to forfeiture

as authorized by this subchapter:

(1) all controlled substances that are or have been manufactured, distributed, dispensed, delivered, acquired, obtained, or possessed in violation of this Act;

(2) all raw materials, products, and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this Act;

(3) all property that is used, or intended for use, as a container for property described in paragraph (1) or (2);

(4) all books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used, or intended for use, in violation of this Act;

(5) any conveyance, including aircraft, vehicles, vessels, trailers, and railroad cars, that is used or intended for use to transport for delivery or in any manner facilitate the transportation for delivery of any property described in paragraph (1), (2), or (3), provided that no conveyance used by any person as a common carrier shall be forfeited under this subchapter unless the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Act.

(b) No property shall be forfeited under this subchapter by reason of any act established by the owner thereof to have been committed without his knowledge or consent.

(c) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of or consented to the act which caused the property to be subject to forfeiture.

Sec. 5.04. SEIZURE. (a) Property subject to forfeiture under this subchapter may be seized by any peace officer under authority of a search warrant issued pursuant to this Act.

(b) Seizure of any property subject to forfeiture may be made without warrant if:

(1) the owner, operator, or agent in charge of the property consents;

(2) the seizure is incident to a search to which the owner, operator, or agent in charge of the property consents;

(3) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this Act; or

(4) the seizure was incident to a lawful arrest, lawful search, or lawful search incident to arrest.

Sec. 5.05. NOTIFICATION OF FORFEITURE PROCEEDINGS. (a) When any property is seized, proceedings under this section shall be instituted promptly.

(b) The seizing officer shall immediately cause to be filed in the name of the State of Texas with the clerk of the district court of the county in which the seizure is made a notice of the seizure and intended forfeiture. Certified copies of the notice shall be served upon the following persons as provided for the serving of process by citation in civil cases:

(1) the owner of the property, if address is known;

(2) any secured party who has registered his lien or filed a financing statement as provided by law; and

(3) any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the Texas Department of Public Safety has knowledge.

(c) If the property is a motor vehicle susceptible of registration under the motor vehicle registration laws of this state and if there is any reasonable cause to believe that the vehicle has been registered under the laws of this state, the officer in charge of initiating the forfeiture proceedings shall make inquiry of the State Highway Department as to what the records of the State Highway Department show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(d) If the property is a motor vehicle and is not registered in Texas,

then the officer in charge of initiating the proceeding shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, he shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest, or other instrument in the nature of a security device which affects the vehicle.

(c) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, the officer in charge of initiating the proceeding shall make inquiry of the appropriate official designated in Chapter 9, Business and Commerce Code, as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(f) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the officer in charge of initiating the proceedings shall make inquiry of the administrator of the Federal Aviation Administration as to what the records of the administrator show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(g) In the case of all other property subject to forfeiture, if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the officer in charge of initiating the proceeding shall make a good faith inquiry to identify the holder of any such instrument.

(h) In the event the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, security interest, or other interest in the nature of a security interest which affects the property, the officer in charge of initiating the proceeding shall cause any record owner and also any lienholder, secured party, or other person who holds an interest in the property in the nature of a security interest which affects the property to be named a party to the proceeding and to be served with citation of the pendency thereof as provided by the Texas Rules of Civil Procedure.

(i) If a person was in possession of the property subject to forfeiture at the time that it was seized, he shall also be made a party to the proceeding.

(j) If no person was in possession of the property subject to forfeiture at the time that it was seized and if the owner of the property is unknown, the officer in charge of initiating the proceeding shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall issue a citation for service by publication addressed to "the Unknown Owner of . . .", filling in the blank space with a reasonably detailed description of the property subject to forfeiture. The citation shall contain the other requisites prescribed in Rules 114 and 115 and shall be served as provided by Rule 116 of the Texas Rules of Civil Procedure.

(k) No proceedings instituted pursuant to the provisions of this subchapter shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with, and the officer initiating the proceeding shall introduce into evidence at the hearing any answer received from an inquiry required by Subsections (c) through (g).

Sec. 5.06. **REPLEVY OF SEIZED PROPERTY.** (a) Any property, other than a controlled substance or raw material, seized under this subchapter may be replevied by the owner, lienholder, secured party, or other party holding an interest in the nature of a security interest affecting the property, upon execution by him of a good and valid bond with sufficient surety in a sum double the appraised value of the property replevied, which bond shall be approved by the seizing officer and shall be conditioned upon return of the property to the custody of the officer on the day of hearing of the forfeiture proceeding and

abide the judgment of the court.

Sec. 5.07. **FORFEITURE HEARING.** (a) An owner of property that has been seized shall file a verified answer within 20 days of the mailing or publication of notice of seizure. If no answer is filed, the court shall hear evidence that the property is subject to forfeiture and may upon motion forfeit the property to the Texas Department of Public Safety. If an answer is filed, a time for hearing on forfeiture shall be set within 30 days of filing the answer and notice of the hearing shall be sent to all parties.

(b) If the owner of the property has filed a verified answer denying that the property is subject to forfeiture then the burden is on the state to prove beyond a reasonable doubt that the property is subject to forfeiture. However, if no answer has been filed by the owner of the property, the notice of seizure may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture.

(c) At the hearing any claimant of any right, title, or interest in the property may prove his lien, security interest, or other interest in the nature of a security interest, to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(d) If it is found beyond a reasonable doubt that the property is subject to forfeiture, then the judge shall upon motion forfeit the property to the Department of Public Safety. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, or other person holding an interest in the property in the nature of a security interest is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows beyond a reasonable doubt that the property is subject to forfeiture, the court shall order the property forfeited to the Department of Public Safety.

(e) Except as otherwise provided in this section, the judge of the district court having jurisdiction shall order destruction of all forfeited controlled substances and raw materials. A record of the place where the controlled substances and raw materials were seized, of the kind and quantities so destroyed, and of the time, place, and manner of destruction, shall be kept, and a return under oath, reporting the destruction, shall be made to the District Court by the officer who destroys them.

Sec. 5.08. **DISPOSITION OF FORFEITED PROPERTY.** (a) Regarding all controlled substances and raw materials which have been forfeited, the director is authorized to:

- (1) retain the property for its official purposes;
- (2) deliver the property to a government agency or department for official purposes;
- (3) deliver the property to a person authorized by the director to receive it; or
- (4) destroy the property that is not otherwise disposed.

(b) All other property that has been forfeited, except as provided below, shall be sold at a public auction under the direction of the county sheriff after notice of public auction as provided by law for other sheriff's sales. The proceeds of the sale shall be delivered to the district clerk and shall be disposed of as follows:

(1) to any bona fide lienholder, secured party, or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(2) the balance, if any, after deduction of all storage and court costs, shall be forwarded to the state comptroller and deposited with and used as general funds of the state.

(c) The Department of Public Safety may maintain, repair, use, and operate for official purposes all property that has been forfeited to it if it is free from any interest of a bona fide lienholder, secured party, or other party who holds an interest in the property in the nature of a security interest. The

department may purchase the interest of a bona fide lienholder, secured party, or other party who holds an interest so that the property can be released for use by the department. The department may maintain, repair, use, and operate the property with money appropriated to the department for current operations. If the property is a motor vehicle susceptible of registration under the motor vehicle registration laws of this state, the department is deemed to be the purchaser and the certificate of title shall be issued to it as required by Subsection (e) of this section.

(d) Storage charges on any property accrued while the property is stored at the request of a seizing officer of the department pending the outcome of the forfeiture proceedings shall be paid by the department out of its appropriations if such property after final hearing is not forfeited to the department.

(e) The State Highway Department shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

Sec. 5.09. SCHEDULES I AND II PLANT SPECIES--SEIZURE AND FORFEITURE. (a) Species of plants from which controlled substances in Schedules I and II may be derived that have been planted or cultivated in violation of this Act, of which the owners or cultivators are unknown, or that are wild growths, may be seized and summarily forfeited to the state. The provisions of this subsection do not apply to unharvested peyote growing in its natural state.

(b) The failure, upon demand by any peace officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

Sec. 5.10. BURDEN OF PROOF; LIABILITIES. (a) It is not necessary for the state to negate any exemption or exception set forth in this Act in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this Act, and the burden of going forward with the evidence with respect to any exemption or exception shall be upon the person claiming its benefit.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this Act, he is presumed not to be the holder of the registration or form. The presumption is subject to rebuttal by a person charged with an offense under this Act.

(c) No liability is imposed by this Act upon any authorized state, county, or municipal officer, engaged in the lawful performance of his duties.

Sec. 5.11. UNLAWFUL MANUFACTURE, DELIVERY, OR POSSESSION makes, distributes, or possesses any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any controlled substance or container or labeling thereof so as to render the controlled substance a counterfeit substance is guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not less than 2 years or more than 10 years.

Sec. 5.12. EDUCATION AND RESEARCH. (a) The Texas Department of Community Affairs, in cooperation with other appropriate state agencies, shall carry out educational programs designed to prevent or deter misuse and abuse of controlled substances. In connection with these programs it may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled

substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The director shall encourage research on misuse and abuse of controlled substances. In connection with research, and in furtherance of the enforcement of this Act, he may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(A) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this Act;

(B) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and

(C) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

Sec. 5.13. **SEARCH WARRANTS.** A search warrant may be issued to search for and seize controlled substances possessed or manufactured in violation of this Act. The application for the issuance of and the execution of a search warrant under this section shall conform to the provisions of the Code of Criminal Procedure, 1965, to the extent applicable.

Sec. 5.14. **REPORT OF ARRESTS.** (a) All law enforcement agencies in this state shall file semiannually with the director a report of all arrests for drug offenses made by them during the preceding six months. Such reports shall be made on forms provided by the director, and shall contain such information as required therein.

(b) The director shall publish an annual summary of all drug arrests in this state.

SUBCHAPTER 6. MISCELLANEOUS

Section 6.01. **SAVING PROVISION.** (a) Except as provided in Subsections (b) and (c), this Act applies only to offenses committed on and after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose, as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date.

(b) Conduct constituting an offense under existing law that is no longer an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a final conviction existing on the effective date of this Act, for conduct constituting an offense under existing law, is valid and unaffected by this Act.

(c) In a criminal action pending, on appeal, or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court requesting that the court sentence him under the provisions of this Act.

Sec. 6.02. **REPEALER.** The Uniform Narcotic Drug Act, as amended (Article 725b, Vernon's Texas Penal Code); Chapter 237, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 725c, Vernon's Texas Penal Code); and Chapter 300, Acts of the 54th Legislature, 1955, as amended

(Article 725d, Vernon's Texas Penal Code), are repealed.

Sec. 6.03. **CONFORMING AMENDMENTS.** (a) Subsections (a), (f), and (g), Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code), are amended to read as follows:

"(a) The term 'dangerous drug' means any drug or device that is not included in Schedules I through V of the Texas Controlled Substances Act and that is unsafe for self-medication, and includes the following:

"(1) Tranquilizers.

"(2) Procaine, its salts, derivatives, or compounds or mixtures thereof except ointments and creams for topical application containing not more than two and one-half percent (2-1/2%) strength.

"(3) Any drug or device which bears the legend: Caution: federal law prohibits dispensing without prescription, or the legend: Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

"(4) Phendimetrazine, its salts, derivatives, or compounds or mixtures thereof.

"(5) Pentazocine, its salts, derivatives, or compounds or mixtures thereof."

"(f) The term 'pharmacist' shall mean a person licensed by the State Board of Pharmacy to practice the profession of pharmacy and to prepare, compound, and dispense practitioners' prescriptions, drugs, medicines, and poisons.

"(g) The term 'prescription' means a written order, and in cases of emergency, a telephonic order, by a practitioner (or his agent as designated in writing to the pharmacist) to a pharmacist for a dangerous drug for a particular patient, which specifies the date of its issue, the name and address of the patient (and, if such dangerous drug is prescribed for an animal, the species of such animal), the name and quantity of the dangerous drug prescribed, and the directions for use of such drug."

(b) Sections 4, 5, and 6, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code), are amended to read as follows:

"Section 4. The provisions of paragraphs (a), (d), and (h) of Section 3 shall not be applicable:

"(a) As to the delivery of dangerous drugs to persons included in any of the classes hereinafter named, or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; or

"(b) To the possession of dangerous drugs by such persons or their agents or employees for such use:

"(1) Pharmacy, drug store, dispensary, apothecary shop, or prescription laboratory, duly registered with the State Board of Pharmacy;

"(2) Practitioners;

"(3) Persons who procure dangerous drugs for the purpose of lawful research, teaching, or testing, and not for resale;

"(4) Hospitals which procure dangerous drugs for lawful administration by practitioners;

"(5) Officers or employees of Federal, State, or local government;

"(6) Manufacturers and Wholesalers registered with the Commissioner of Health as required by Chapter 373, Acts of the 57th Legislature, 1961, as amended (Article 4476-5, Vernon's Texas Civil Statutes).

"(7) Carriers and Warehousemen.

"Section 5. Persons (other than carriers) exempt from the provisions of paragraphs (a) and (b) of Section 3 by virtue of Section 4 shall:

"(a) (1) Make a complete record of all stocks of drugs set forth in Section 2(a) (1), (4), and (5) hereof, on hand on the effective date of this Act, and retain such record for not less than two (2) calendar years immediately following such date, and

"(2) Retain each commercial or other record relating to those drugs set

forth in Section 2(a) (1), (4), and (5) hereof, maintained by them in the usual course of their business or occupation, for not less than two (2) calendar years immediately following the date of such record, to create and maintain a perpetual record of the purchases of those drugs set forth in Section 2(a) (1), (4), and (5) hereof.

"(b) Pharmacies as set forth in Section 4(b) (1) shall, in addition to complying with the provisions of subsection (2) above, retain each prescription for those drugs set forth in Section 2(a) (1), (4), and (5) hereof, received by them for not less than two (2) calendar years immediately following the date of the filling or the date of the last refilling of such prescription, whichever is the later date, to create and maintain a perpetual record of the sales of those drugs set forth in Section 2(a) (1), (4), and (5) hereof.

"Section 6. Persons required to keep files and records relating to those drugs set forth in Section 2(a) (1), (4), and (5) hereof, by Section 5 shall

"(1) make such files or records available for inspection by any public official or employee engaged in the enforcement of this Act, at all reasonable hours, for inspection and copying; and

"(2) accord to such officer or employee full opportunity to make inventory of all stocks of those drugs set forth in Section 2(a) (1), (4), and (5) hereof, on hand; and it shall be unlawful for any such person to fail to make such files or records available or to accord such opportunity to check their correctness."

(c) Sections 3 and 15, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as last amended by Chapter 746, Acts of the 62nd Legislature, Regular Session, 1971, and by Chapter 901, Acts of the 62nd Legislature, Regular Session, 1971 (Article 726d, Vernon's Texas Penal Code), are amended to read as follows:

"Section 3. The following acts, the failure to act as hereinafter set forth, and the causing of any such act or failure are hereby declared unlawful, except as provided in Section 4:

"(a) The delivery or offer of delivery of any dangerous drug unless:

"(1) Such dangerous drug is delivered or offered to be delivered by a pharmacist, upon an original prescription, and there is affixed to the immediate container in which such drug is delivered or offered to be delivered a label bearing the name and address of the owner of the establishment from which such drug was delivered or offered to be delivered; the date on which the prescription for such drug was filled; the number of such prescription as filed in the prescription files of the pharmacist who filled such prescription; the name of the practitioner who prescribed such drug; the name and address of the patient, and if such drug was prescribed for an animal, a statement showing the species of the animal; and the directions for use of the drug as contained in the prescription; or

"(2) Such dangerous drug is delivered or offered to be delivered by a practitioner in the course of his practice and the immediate container in which such drug is delivered or offered to be delivered bears a label on which appears the directions for use of such drug, the name and address of such practitioner, the name and address of the patient, and, if such drug is prescribed for an animal, a statement showing the species of the animal.

"(b) The refilling of any prescription for a dangerous drug, unless and as designated on the prescription by the practitioner, or through authorization by the practitioner at the time of refilling.

"(c) The delivery of a dangerous drug upon prescription unless the pharmacist who filled such prescription files and retains it as required in Section 6.

"(d) The possession of a dangerous drug by any person unless such person obtained the drug under the specific provision of Section 3(a) (1) and (2) of this Act and possesses the drug in the container in which it was delivered to him by the pharmacist or practitioner selling or dispensing the same; and any other possession of a dangerous drug shall be prima facie evidence of illegal possession.

"(e) The refusal to make available and to accord full opportunity to check

any record or file as required by Section 5 and Section 6.

"(f) The failure to keep records as required by Section 5 and Section 6.

"(g) The using of any person to his own advantage, or revealing, other than to an officer or employee of the State Board of Pharmacy, or to a court when relevant in a judicial proceeding under this Act, any information required under the authority of Section 6, concerning any method or process which as a trade secret is entitled to protection.

"(h) For any person at any time to have, or possess, a hypodermic syringe, needle, or any instrument adapted for the use of dangerous drugs by subcutaneous injections in a human being and which is possessed for that purpose, unless such possession is for the purpose of subcutaneous injections of a drug, or drugs, or medicine, the use of which is authorized by the direction of a licensed physician.

"(i) Except as otherwise provided in this Act, the possession for sale of any dangerous drug defined in this Act."

"Section 15. (a) Any person possessing in violation of Section 3 of this Act any dangerous drug defined in Section 2(a) of this Act shall be fined an amount not to exceed One Thousand Dollars (\$1,000) or confined in jail for a period of not less than thirty (30) days nor more than two (2) years, or by both such fine and imprisonment. For any second or subsequent violation, any person shall be guilty of a felony and shall be confined in the penitentiary not less than two (2) years nor more than ten (10) years.

"(b) Any person who sells or delivers or offers to sell or deliver in violation of this Act any dangerous drug defined in this Act, shall be guilty of a felony and upon conviction is punishable by confinement in the penitentiary for not less than two (2) nor more than ten (10) years. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

"(c) Any person violating any other provision of this Act not set out in Subsection (a) or (b) of this section shall be fined an amount not exceeding One Thousand Dollars (\$1,000) or confined in jail for a period of not less than thirty (30) days nor more than two (2) years, or by both such fine and imprisonment. For any second or subsequent violation any person shall be guilty of a felony and shall be confined in the penitentiary not less than two (2) years nor more than ten (10) years.

"(d) Any person not authorized by this Act or Federal law who manufactures any dangerous drug shall be fined an amount not less than One Thousand Dollars (\$1,000) nor more than Five Thousand Dollars (\$5,000) or confined in jail for a period of not less than six (6) months nor more than two (2) years or by both such fine and imprisonment.

"(e) Any person who possesses both methylamine and phenylacetone at the same time to manufacture methamphetamine shall be guilty of a felony and shall be confined in the penitentiary not less than one (1) year nor more than five (5) years, provided, however, no manufacturer licensed or registered by the State or persons authorized by regulation of the State Board of Pharmacy to possess both methylamine and phenylacetone shall be covered by this section if such Board, by regulation, shall have authorized such person to possess such drugs."

(d) Section 7, Chapter 425, Acts of the 56th Legislature, 1959, (Article 726d, Vernon's Texas Penal Code), is repealed.

(e) Article 36, Penal Code of Texas, 1925, as amended, is amended to read as follows:

"Article 36. INTOXICATION AND USE OF CONTROLLED SUBSTANCES OR DANGEROUS DRUGS AS A DEFENSE. Neither intoxication nor temporary insanity of mind produced by the voluntary recent use of ardent spirits, intoxicating liquor, controlled substances as defined in the Texas Controlled Substances Act, or dangerous drugs, or a combination thereof, shall constitute any excuse for the commission of crime. Evidence of temporary insanity produced, however, by such use of ardent spirits, intoxicating liquor, controlled substances or dangerous drugs, or a combination thereof, may be introduced by the defendant in mitigation of the penalty attached to the offense for which he is

being tried

"When temporary insanity is relied upon as a defense and the evidence tends to show that such insanity was brought about by the immoderate use of intoxicating liquor, controlled substances or dangerous drugs, or by a combination thereof, the judge shall charge the jury in accordance with the provisions of this Article."

(f) Section 1, Article 513, Penal Code of Texas, 1925, as amended, is amended to read as follows:

"Section 1. A disorderly house is any assignation house, or any house to which persons resort for the purpose of smoking or in any manner using opium or other controlled substances or the illegal use of dangerous drugs."

(g) Section 12, Chapter 107, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 4542a, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 12. The State Board of Pharmacy may in its discretion refuse to issue a license to any applicant, and may cancel, revoke, or suspend the operation of any license by it granted for any of the following reasons:

"(a) That said applicant is guilty of gross immorality;

"(b) That said applicant or licensee is guilty of any fraud, deceit, or misrepresentation in the practice of pharmacy or in his seeking admission to such practice;

"(c) That said applicant or licensee is unfit or incompetent by reason of negligence;

"(d) That said applicant or licensee has been convicted of a felony or a misdemeanor which involves moral turpitude;

"(e) That said applicant or licensee is an habitual drunkard or is addicted to the use of morphine, cocaine, or other drugs having similar effect, or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind;

"(f) That said licensee, directly or indirectly, aids or abets in the practice of pharmacy any person not duly licensed to practice under this Act; provided further, that the said licensee is responsible for the legal operation of the pharmacy, dispensary, prescription laboratory or apothecary shop as long as his name appears on the permit issued for the operation of such establishments;

"(g) That said applicant or licensee has been convicted in either a State or Federal Court of the illegal use, sale, or transportation of intoxicating liquor, narcotic drugs, barbiturates, amphetamines, desoxephedrine, their compounds or derivatives, controlled substances as defined in the Texas Controlled Substances Act, or any other dangerous or habit-forming drugs;

"(h) That said licensee has engaged in the act of 'substitution' as that term is hereinafter defined. The term 'substitution' as used in this Act shall mean the dispensing of a drug or a brand of drug other than that which is ordered or prescribed without the express consent of the orderer or prescriber. If the consent of the orderer or prescriber for substitution by the licensee is obtained, a notation shall be made by the licensee on the prescription stating that such consent has been obtained and by whom such consent was given, and such notation shall, in addition, specify the drug or brand of drug so substituted;

"(i) That said licensee is a member of the Communist Party or affiliated with such party.

"Revocation, cancellation, or suspension of a license shall be only after ten (10) days notice and a full hearing. Any person whose license to practice pharmacy has been refused, revoked, or suspended by the Board may, within twenty (20) days after the effective date of the order, decision, or ruling of the Board, take an appeal to any of the District Courts where said applicant resided at the time the offense was committed which resulted in the Board's action refusing, revoking, or suspending said license."

(h) Subsection (d), Section 17, Chapter 107, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 4542a, Vernon's Texas Civil Statutes), is amended to read as follows:

"(d) The State Board of Pharmacy may, in its discretion, refuse to issue a permit to any applicant, and may cancel, revoke, or suspend the operation of any permit by it granted under the foregoing subsections for any of the following reasons:

"(1) That the applicant has been convicted of a felony or a misdemeanor which involves moral turpitude, or if the applicant be an association, joint stock company, partnership, or corporation, that a managing officer has been convicted of a felony or a misdemeanor which involves moral turpitude;

"(2) That the applicant has been convicted in either a State or Federal Court of the illegal use, sale, or transportation of intoxicating liquor, narcotic drugs, barbiturates, amphetamines, desoxephedrine, their compounds or derivatives, controlled substances as defined in the Texas Controlled Substances Act, or any other dangerous or habit-forming drugs, or if the applicant be an association, joint stock company, partnership, or corporation, that a managing officer has been convicted in either a State or Federal Court of the illegal use, sale, or transportation of intoxicating liquor, narcotic drugs, barbiturates, amphetamines, desoxephedrine, their compounds or derivatives, controlled substances, or any other dangerous or habit-forming drugs;

"(3) That the applicant applying for, or licensed, pursuant to Subsection (a) hereof has in any manner advertised his selling price for any drug or drugs which bear the legend: 'Caution: Federal law prohibits dispensing without prescription';

"(4) That any owner or employee of an owner of a licensed retail pharmacy, drugstore, dispensary, or apothecary shop, pursuant to Subsection (a), has violated any provision of this Act;

"(5) That the applicant has sold counterfeit drugs and medicines, or has sold without a prescription drugs and medicines bearing the legend: 'Caution: Federal Law prohibits dispensing without prescription,' to persons other than:

"(A) the owners or operators of a pharmacy, drug store, dispensary, apothecary shop, or prescription laboratory, duly registered with the State Board of Pharmacy;

"(B) practitioners;

"(C) persons who procure controlled substances or dangerous drugs for the purpose of lawful research, teaching, or testing, and not for resale;

"(D) hospitals which procure controlled substances or dangerous drugs for lawful administration by practitioners;

"(E) officers or employees of federal, state, or local government acting in the lawful discharge of their official duties;

"(F) manufacturers and wholesalers registered with the Commissioner of Health as required by Chapter 373, Acts of the 57th Legislature, 1961, as amended (Article 4476-5, Vernon's Texas Civil Statutes);

"(G) carriers and warehousemen.

(i) Subsection (a), Section 5F, Article II, Texas Liquor Control Act, as added (Article 667-5F, Vernon's Texas Penal Code), is amended to read as follows:

"(a) The County Judge shall refuse any original application for a Retail Dealer's On-Premise License or a Wine and Beer Retailer's Permit if he finds that the individual applicant, or the spouse of such applicant, has at any time during the three years next preceding the filing of such application been finally convicted of a felony, or any of the following offenses:

"(1) prostitution;

"(2) vagrancy convictions involving moral turpitude;

"(3) bookmaking;

"(4) gambling (gaming);

"(5) any offense involving controlled substances as defined in the Texas Controlled Substances Act or dangerous drugs;

"(6) violations of the Texas Liquor Control Act resulting in the cancellation of a license or permit, or a fine of not less than Five Hundred Dollars (\$500);

"(7) more than three violations of the Texas Liquor Control Act relating

to minors;

"(8) bootlegging;

"(9) violation of penal law involving firearms or other deadly weapons or if he finds that three years has not elapsed since the termination of any sentence, parole or probation served by the applicant, or the spouse of such applicant, as the result of a felony prosecution, or prosecution for any type of offense named herein."

(j) Sections 1 and 2, Chapter 21, Acts of the 55th Legislature, Regular Session, 1957 (Article 353c, Vernon's Texas Penal Code), are amended to read as follows:

"Section 1. It shall be unlawful for any officer or employee of the Texas Prison System or for any other person to furnish, attempt to furnish, or assist in furnishing to any inmate of the Texas Prison System any alcoholic beverage, controlled substance, or dangerous drug except from the prescription of a physician. It shall also be unlawful for any person to take, attempt to take, or assist in taking any of the aforementioned articles into the confines of property belonging to the Texas Prison System which is occupied or used by prisoners except for delivery to a prison warehouse or pharmacy or to a physician.

"Section 2. As used in this Act, 'alcoholic beverage' shall have the meaning defined in the Texas Liquor Control Act, as heretofore or hereafter amended; 'controlled substance' means any substance defined as a controlled substance by the Texas Controlled Substances Act; and 'dangerous drug' means any substance defined as a dangerous drug by Chapter 425, Acts of the 56th Legislature, Regular Session, 1925, as amended (Article 726d, Vernon's Texas Penal Code)."

(k) Subsection (d), Section 24, Water Safety Act, as amended (Article 1722A, Vernon's Texas Penal Code), is amended to read as follows:

"(d) Any person who operates any vessel or manipulates any water skis, aquaplane or similar device, upon the waters of this State in a careless or imprudent manner while such person is intoxicated, or under the influence of intoxicating liquor, or while under the influence of any controlled substance as defined in the Texas Controlled Substances Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) or by imprisonment of not to exceed six (6) months, or both."

(l) Subdivisions (2) and (3), Section 1, Chapter 87, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4413(37), Vernon's Texas Civil Statutes), are amended to read as follows:

"(2) 'Narcotic drugs' has the same meaning as is assigned to the term in the Texas Controlled Substances Act.

"(3) 'Dangerous drug' means any drug, other than a narcotic drug, listed in a schedule in the Texas Controlled Substances Act.

(m) Section 11, Chapter 87, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4413(37), Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 11. As long as any person is acting within the authority of a panel approved research project, that person is immune from prosecution for a violation of the Texas Controlled Substances Act or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code)."

(n) Chapter 373, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4476-5, Vernon's Texas Civil Statutes), is amended by adding a Section 15A to read as follows:

"Section 15A. A drug or device is misbranded if it is a drug or device which is required by Federal Law to bear the statement 'Caution: Federal Law prohibits dispensing without prescription,' and it does not bear the statement."

(o) Section 21, Chapter 373, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4476-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 21. The Commissioner of Health or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, stored or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose:

"(1) of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this Act are being violated, and to determine whether the record keeping provisions of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code), of the Texas Controlled Substances Act or of the regulations of the director of the Department of Public Safety are being violated; and

"(2) to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such samples. It shall be the duty of the Commissioner of Health to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this Act is being violated. Whenever samples are secured by the Commissioner of Health or his agent, an equal amount of the product sampled, may upon request, be given to the person who has custody of the product sampled; payments shall be made only for that portion of the sample actually taken by the said Commissioner or agent."

(p) Subdivision 6, Section 23, Chapter 373, Acts of the 57th Legislature, Regular Session, 1961 (Article 4476-5, Vernon's Texas Civil Statutes), as amended, is amended to read as follows:

"6. The Commissioner of Health may, after notice and hearing, refuse to register or cancel, revoke or suspend the registration of any wholesale drug company for any of the following reasons:

"(a) If the registrant has been convicted of a felony or misdemeanor which involves moral turpitude, or if the registrant be an association, partnership or corporation, that the managing officer has been convicted of a felony or misdemeanor which involves moral turpitude;

"(b) That the registrant has been convicted in either a State or Federal court for the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs, or if the registrant be an associate, partnership, or corporation, that the managing officer has been convicted in either State or Federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

"(c) That based on evidence presented during a hearing it is determined that the applicant or registrant has sold counterfeit drugs and medicines, or has violated any of the provisions of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code), of the Texas Controlled Substances Act, or of the regulations of the director of the Department of Public Safety, including any significant discrepancy in the records required to be maintained by State law."

Sec. 6.04. SEVERABILITY. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Sec. 6.05. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

(Senator Adams in Chair)

Senator Gammage offered the following amendment to the pending amendment to the bill:

Amend the Meier Amendment for C.S.H.B. 447 by adding the following language to the end of the last sentence of Subsection (a)(1), (2) and the end of the last sentence of Subsection (c) of Section 4.03 to read as follows:

"The possession of marihuana shall not be considered a crime involving moral turpitude."

The amendment to the amendment was read and was adopted.

Senator Gammage offered the following amendment to the amendment to the bill:

Amend Meier substitute for C.S.H.B. 447, by adding Sections 4.09, 4.10, and 4.11 at the end of Subchapter 4 to read as follows:

Sec. 4.09. **CONDITIONAL DISCHARGE FOR FIRST OFFENSES.** (a) If any person who has not previously been convicted of an offense under this Act or, subsequent to the effective date of this Act, under any statute of the United States or of any state relating to a substance that is defined by this Act as a controlled substance, is found guilty of a violation of this subchapter after trial or on a plea of guilty, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place him on probation on such reasonable conditions as it may require and for such period as the court may prescribe, except that the probationary period may not exceed two years.

(b) Upon violation of a condition of the probation, the court may enter an adjudication of guilt, pronounce sentence, and punish him accordingly. The court may, in its discretion, dismiss the proceedings against the defendant and discharge him from probation before the expiration of the maximum period prescribed for his probationary period. If during the period of his probation the defendant does not violate any of the conditions of the probation, then upon expiration of the probationary period the court shall discharge him and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without an adjudication of guilt, but a nonpublic record of the proceedings shall be retained by the director solely for use by the courts in determining whether or not, in subsequent proceedings, the person qualifies for conditional discharge under this section.

(c) A discharge or dismissal under this section shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law for conviction of a crime, including any provision for enhancement of punishment for repeat or habitual offenders. There may be only one discharge and dismissal under this section with respect to any person.

(d) This section shall not be construed to provide an exclusive procedure. Any other procedure provided by law relating to suspension of trial or probation may be followed, in the discretion of the trial court.

Sec. 4.10. **EXPUNCTION.** (a) A person convicted of a violation of this subchapter may apply to the sentencing court for an order to expunge from all official records (other than the nonpublic record provided in Section 4.11 of this Act) all recordations relating to his arrest, indictment or information, trial, finding of guilt, probation, sentence if any, and dismissal and discharge pursuant to Section 4.09 of this Act if any. The court shall enter the expunction order if it determines, after hearing, that the applicant was discharged and the proceedings against him were dismissed in accordance with Section 4.09 of this Act.

(b) If a person is acquitted or if a complaint against him is dismissed or an indictment not prossed for a violation of Section 4.04, the court shall order that all official records relating to his arrest, indictment, conviction, continuance, or discharge be expunged.

(c) Any person who has been convicted not more than once of the offense of possession of marihuana under a prior Act of this state may apply to the sentencing court for an order of expunction as provided in Subsection (a) of this section. The court shall enter the order if it determines, after a hearing, that:

(1) the applicant has completed the term of imprisonment or probation imposed on him. The court may, in its discretion, and with the consent of the applicant, reduce the original term of probation to permit him to become eligible for expunction immediately.

(d) An expunction order shall be in writing and shall direct the appropriate custodians of criminal records:

(1) to expunge and destroy the official and unofficial arrest and other criminal records and files and other documents pertaining to the arrest and prosecution or both; to request insofar as they are able the return of such records as they have made available to federal and other state agencies, and to destroy any returned records on receipt; and

(2) to file with the court within 30 days an affidavit that the records have been expunged and destroyed, together with the court's expunction order and a statement that no copies have been retained. Upon receipt of the affidavit, the court shall seal it, together with the original and all copies of its expunction order, and shall forward the sealed documents to the director for retention as provided in Section 4.11 of this Act.

(e) Except as provided in Section 4.11 of this Act, no expunged arrest or conviction may be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute, license, questionnaire, or any other public or private purpose. The effect of the expunction shall be to restore the person in the contemplation of the law to the status he occupied prior to the arrest and conviction. No person whose records have been ordered expunged may be held thereafter under any provision of law to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his failure to recite or acknowledge an expunged arrest, information or indictment, probation, conviction, dismissal, continuance, expunction, or any other related court proceeding in response to any inquiry made of him.

Sec. 4.11. NONPUBLIC RECORDS. (a) The director shall maintain a nonpublic record of all cases discharged and dismissed under Section 4.09 of this Act, and of all cases for which an order of expunction has been granted pursuant to Section 4.10 of this Act.

(b) The nonpublic record shall contain only information sufficient to identify the person and a statement that he has had proceedings against him dismissed pursuant to Section 4.10 of this Act, or that he has had his record expunged pursuant to the provisions of Section 4.10 of this Act. The record shall be maintained solely for the purpose of use by the courts in determining whether or not the person qualifies for the provisions of Section 4.10 or 4.11 of this Act in subsequent proceedings.

(c) Information required by this section shall be forwarded by the district attorney in whose jurisdiction a felony offense was prosecuted or not prossed, and by the county attorney in whose jurisdiction a misdemeanor offense was prosecuted or dismissed.

(d) Information required by this section shall be used solely for the purposes provided in Subsection (b) of this section and may not be disclosed or used for any other purpose. No person may be permitted to learn of an expunged arrest or prosecution, or of the expunction, either directly or indirectly. Any person, except the individual arrested or prosecuted, who divulges such information in violation of this subsection commits a misdemeanor punishable by confinement in jail for not more than six months, by a fine of not more than

\$1,000, or by both.

The amendment to the amendment was read and was adopted.

(President in Chair)

Question recurring on the adoption of the amendment by Senator Meier, "Yeas" and "Nays" were demanded.

The amendment failed of adoption by the following vote: Yeas 11, Nays 18.

Yeas: Blanchard, Braecklein, Clower, Jones, Kothmann, Meier, Mengden, Ogg, Patman, Traeger and Wolff.

Nays: Adams, Aikin, Andujar, Brooks, Gammage, Harrington, Harris, Herring, Hightower, Longoria, Mauzy, McKinnon, McKnight, Santiesteban, Schwartz, Sherman, Snelson and Wallace.

Absent: Creighton and Moore.

Senator Wallace offered the following amendment to the bill:

Amend C.S.H.B. 447, Article 3.01(a) by striking the words "Drug Commissioner" and substituting therefor the word "Director".

The amendment was read and was adopted.

RECORD OF VOTE

Senator Mengden asked to be recorded as voting "Nay" on the adoption of the amendment.

On motion of Senator Wallace and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by the following vote: Yeas 22, Nays 8.

Yeas: Aikin, Andujar, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Jones, Longoria, Mauzy, McKinnon, Meier, Ogg, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

Nays: Adams, Blanchard, Braecklein, Hightower, Kothmann, McKnight, Mengden and Patman.

Absent: Moore.

COMMITTEE SUBSTITUTE HOUSE BILL 447 ON THIRD READING

Senator Wallace moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 447 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Jones, Longoria, Mauzy, McKinnon, McKnight, Meier, Moore, Ogg, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

Nays: Hightower, Kothmann, Mengden and Patman.

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote: Yeas 22, Nays 9.

Yeas: Aikin, Andujar, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Jones, Longoria, Mauzy, McKinnon, Meier, Ogg, Santicsteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

Nays: Adams, Blanchard, Braecklein, Hightower, Kothmann, McKnight, Mengden, Moore and Patman.

BILL AND RESOLUTION SIGNED

The President announced the signing in the presence of the Senate after the caption had been read, the following enrolled bill and resolution:

H. B. 215 (Again Signed)
H.C.R. 131

SENATE BILL 978 RE-REFERRED

On motion of Senator Longoria and by unanimous consent, S.B. 978 was withdrawn from the Committee on Intergovernmental Relations and re-referred to the Committee on Administration.

MESSAGE FROM THE HOUSE

Hall of the House of Representatives
Austin, Texas, May 17, 1973

Honorable William P. Hobby
President of the Senate

Sir: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 16, Repealing S.C.R. 24 of the 59th Legislature of the State of Texas.

S.C.R. 49, Requesting the Supreme Court of Texas to promulgate rules governing the manner of submission of special issues relating to comparative negligence and the other related matters contained in H.B. 88.

S.C.R. 50, Memorializing Congress regarding a daily fee charge for use of boat ramps on federal reservoirs.

S.C.R. 66, Memorializing Congress to take favorable action on the Honorable Jim Wright's H.R. 3523.

S.C.R. 65, Requesting the Texas Legislative Council and the Texas Highway Department to update the Texas Capitol - Symbol of Accomplishment and bring out a second edition of this publication.

S.B. 209, A bill to be entitled An Act amending Chapter 274, Acts of the 60th Legislature, Regular Session, 1967, by adding thereto a new article to be

identified and codified as Article 5069-1.042, providing a general rule for determination of the rate of interest on real estate loans secured by a lien and authorizing refund of excess charges in the event of premature termination of loans; and declaring an emergency. (With amendment)

S.B. 891, A bill to be entitled An Act creating Upper Lampasas River Municipal Water District as a conservation district, under Article XVI, Section 59, of the Texas Constitution, comprising the territory contained in the City of Copperas Cove, Coryell County, Texas, and the City of Lampasas, Lampasas County, Texas, as the boundaries of said cities existed on January 1, 1973, for the purpose of providing a source of water supply for municipal, domestic, commercial, and industrial use, and diverting, impounding, storing, treating, and transporting the same, and acquiring, constructing, and operating water facilities; providing for the exercise of powers granted by Chapter 25 of the Water Code to districts created under Article XVI, Section 59, of the the Texas Constitution; providing for a board of directors for the government of said district; providing the means of annexing additional territory to said district; authorizing the district to obtain permits from the Texas Water Rights Commission and from owners of permits; authorizing the district to acquire any interest in land for its purposes by condemnation; providing that any construction contract in excess of \$5,000 should be made only after publication of notice; authorizing the district to issue bonds and providing for the payment and security thereof; providing that said bonds shall be payable either from ad valorem taxes or revenues, or a combination of ad valorem taxes and revenues; authorizing the issuance of refunding bonds, authorizing the execution of trust indentures or deeds of trust to secure bonds payable from revenues or partly from revenues; providing for elections approving the issuance of bonds payable wholly or partly from ad valorem taxes; authorizing the district to enter into contracts with public agencies, political subdivisions, and others, including specifically the cities of Copperas Cove and Lampasas and Central Texas College for any purpose relating to the district's powers and functions, including supplying water to them, and for operation of the district's water facilities; authorizing all public agencies and political subdivisions, including specifically the cities of Copperas Cove and Lampasas and Central Texas College to contract with and convey land or any interest therein to the district; providing for the approval of bonds issued by the district by the attorney general and registration of bonds by the Comptroller of Public Accounts of the State of Texas; providing for supervision by the Texas Water Rights Commission; prescribing other powers and duties of the district; providing a severability clause; and declaring an emergency.

Respectfully submitted,
DOROTHY HALLMAN
Chief Clerk, House of Representatives

SENATE BILL 778 ON THIRD READING

On motion of Senator Gammage and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

S.B. 778, A bill to be entitled An Act amending Chapter 21 of the Insurance Code by adding a new Section 18 to Article 21.49-1 (Senate Bill 233, 62nd Legislature of the State of Texas), broadening the application of certain provisions of said Article to cover additional insurers; providing for remedies, penalties, and sanctions, including suspension or revocation of Certificate of Authority of companies failing to comply with said provisions; providing a severance clause; and declaring an emergency.

The bill was read third time.

Senator Schwartz offered the following amendment to the bill:

Amend S.B. 778 by adding a new Section 2, renumbering Section 2 and 3 to conform, the new Section 2 to read as follows:

Section 2. Article 21.49-1, Section 5(f)(2) of the Insurance Code, as amended, is amended to read as follows:

"(2) any transaction which is subject to the provisions of: (i) Article 21.25, Section 1 through 5, of this code, dealing with the merger or consolidation of two or more insurers and complying with the terms of such article until the plan of merger or consolidation has been filed by the insurer with the Commissioner of Insurance. After the filing of such plan of merger or consolidation the transaction shall be subject to the provisions of Section 5 of this article. The Commissioner may exempt such transaction from any or all of the notice requirements of Section 5 of this article if he finds that the notice furnished to shareholders and security holders in connection with such merger or consolidation contained all material and information required under Section 5 of this article, (ii) Article 11.20 of this code, (iii) Article 11.21 of this code, (iv) Article 14.13 of this code, (v) Article 14.61 of this code, (vi) Article 15.63 of this code, (vii) Article 21.26 of this code, provided that all or 100% of the stock is initially and simultaneously purchased in order to effect a total reinsurance, (viii) Article 22.15 of this code, and (ix) Article 22.19 of this code, provided that the reinsurance is a total direct reinsurance agreement; or".

The amendment was read and was adopted.

On motion of Senator Gammage and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was finally passed.

SENATE BILL 984 RE-REFERRED

On motion of Senator Traeger and by unanimous consent, S.B. 984 was withdrawn from the Committee on Intergovernmental Relations and re-referred to the Committee on Administration.

HOUSE BILL 911 ON SECOND READING

On motion of Senator Aikin and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 911, A bill to be entitled An Act appropriating Five Hundred Thousand Dollars (\$500,000) to the Senate of the State of Texas and One Million Dollars (\$1,000,000) to the House of Representatives of the State of Texas for the fiscal year ending August 31, 1973; and declaring an emergency.

The bill was read second time and was passed to third reading.

HOUSE BILL 911 ON THIRD READING

Senator Aikin moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 911 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower,

Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

VOTE ON FINAL PASSAGE OF COMMITTEE SUBSTITUTE HOUSE BILL 264 RECONSIDERED

On motion of Senator Ogg and by unanimous consent, the vote by which C.S.H.B. 264 was finally passed was reconsidered.

Question, Shall C.S.H.B. 264 be finally passed?

Senator Ogg offered the following amendment to the bill:

Amend C.S.H.B. 264 by striking all below the enacting clause and substituting the following:

Section 1. Section 1, Chapter 7, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 2168a, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1. (a) In all suits, either civil or criminal, or in matters of probate, pending in any court of this State at any time within thirty (30) days of a date when the Legislature is to be in Session, or at any time the Legislature is in Session, it shall be mandatory that the court continue such cause if it shall appear to the court, by affidavit, that any party applying for such continuance, or any attorney for any party to such cause, is a Member of either branch of the Legislature, and will be or is in actual attendance on a Session of the same. Where a party to any cause is a Member of the Legislature, his affidavit need not be corroborated. On the filing of such affidavit, the court shall continue the cause until thirty (30) days after the adjournment of the Legislature and such affidavit shall be proof of the necessity for such continuance, and such continuance shall be deemed one of right and shall not be charged against the party receiving such continuance upon any subsequent application for continuance. It is hereby declared to be the intention of the Legislature that the provisions of this Section shall be deemed mandatory and not discretionary.

"(b) If the Member of the Legislature is an attorney for a party to such cause, the affidavit must contain his declaration that he has been retained, with or without compensation, by a party to the cause, and that he will actively participate in the preparation and presentation of the case until its conclusion in the court in which the continuance is sought, unless the judge, in his discretion, determines that he may be permitted to withdraw from the cause.

"(c) If a continuance is obtained under this Act and it later appears that the Member of the Legislature, as an attorney for a party to the cause, has failed to actively participate in the preparation and presentation of the case, unless permitted by the judge to withdraw, the judge may refer the matter to the district grievance committee or other appropriate body of the State Bar of Texas, or the judge in his discretion may hold the attorney in question in contempt of court.

"(d) All of the provisions of this Section are specifically made applicable to the Constitutional Convention to be held in the year 1974 at which all Members of the Legislature will be delegates."

Sec. 2. This amendatory Act does not affect any continuance granted before the effective date of this Act.

Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted.

The bill as amended was again passed by the following vote: Yeas 31, Nays 0.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

SENATE RESOLUTION 797 ON SECOND READING

Senator Schwartz offered the following resolution:

S.R. 797, Directing the Legislative Budget Board to undertake a study of agricultural research.

SCHWARTZ
CREIGHTON
AIKIN
MOORE

The resolution was read.

On motion of Senator Schwartz and by unanimous consent, the resolution was considered immediately and was adopted.

NOTICES OF INTENT

The following Notices of Intent were filed with the Secretary of the Senate:

Friday, May 18, 1973

S.B. 424 - Senator Snelson
S.B. 652 - Senator Snelson
S.B. 800 - Senator Mauzy
H.B. 167 - Senator Longoria
H.B. 177 - Senator Snelson
H.B. 596 - Senator Snelson
H.B. 628 - Senator Traeger
H.B. 825 - Senator Sherman

H.B. 959 - Senator Tracger
C.S.H.B. 169 - Senator Jones
S.B. 308 - Senator Mengden
S.B. 428 - Senator Mengden
C.S.S.B. 456 - Senator Jones
S.B. 541 - Senator Mengden
C.S.S.B. 837 - Senator Jones
S.B. 184 - Senator Mengden
C.S.S.B. 545 - Senator Mengden
S.B. 86 - Senator Brooks
S.B. 107 - Senator Wolff
S.B. 137 - Senator Wolff
S.B. 164 - Senator Adams
S.B. 168 - Senator Adams
S.B. 233 - Senator Hightower
S.B. 280 - Senator Wolff
S.B. 285 - Senator Mauzy
C.S.S.B. 442 - Senator Mauzy
S.B. 445 - Senator Wolff
C.S.S.B. 462 - Senator Mengden
C.S.S.B. 490 - Senator Brooks
C.S.S.B. 536 - Senator Clower
C.S.S.B. 628 - Senator Mengden
C.S.S.B. 639 - Senator Clower
C.S.S.B. 712 - Senator Mauzy
C.S.S.B. 715 - Senator Aikin
C.S.S.B. 726 - Senator Hightower
C.S.S.B. 804 - Senator Herring
S.B. 819 - Senator Wolff
S.B. 820 - Senator Wolff
S.B. 874 - Senator Mauzy
S.B. 879 - Senator Herring
S.B. 911 - Senator Aikin
S.B. 969 - Senator Kothmann
S.B. 971 - Senator Mauzy
S.J.R. 34 - Senator Mauzy
H.B. 311 - Senator Hightower
H.B. 787 - Senator Clower
H.B. 842 - Senator Wallace
H.B. 845 - Senator Brooks
H.C.R. 96 - Senator Schwartz
S.B. 501 - Senator Santiesteban
C.S.S.B. 655 - Senator Meier
S.B. 729 - Senator Santiesteban
S.B. 783 - Senator Ogg
S.B. 966 - Senator Ogg
S.B. 967 - Senator Ogg
H.B. 55 - Senator Santiesteban
H.B. 460 - Senator Santiesteban
H.B. 548 - Senator Santiesteban
H.B. 569 - Senator Ogg
H.B. 1182 - Senator Ogg

MEMORIAL RESOLUTION

S.R. 789 - By Senators Ogg and McKnight: Memorial resolution for William J. Goldston, Sr.

WELCOME AND CONGRATULATORY RESOLUTIONS

S.R. 773 - By Senator Ogg: Extending welcome to Robert Doty.

S.R. 774 - By Senator Andujar: Commending Dr. Jerome A. Moore.

S.R. 775 - By Senator Schwartz: Extending congratulations to Miss Leona Boone.

S.R. 776 - By Senator Schwartz: Extending welcome to Charles "Sonny" Jenkins and Nancy Jenkins.

S.R. 777 - By Senator Hightower: Commending Texas Ranger Byron Odell Currin.

S.R. 778 - By Senator Creighton: Extending welcome to Patrick Thompson, et al.

S.R. 779 - By Senator Aikin: Extending welcome to Mayor Maurice Isbell.

S.R. 780 - By Senator Clower: Extending welcome to The Reverend and Mrs. Ed Spivey.

S.R. 781 - By Senator Clower: Extending commendation to Sandra Kay Spivey.

S.R. 782 - By Senator Clower: Extending commendation to Kevin Ray Spivey and Michael Gene Johnson.

S.R. 783 - By Senator Clower: Extending commendation to Robert Jeffrey Grinnon.

S.R. 784 - By Senator Clower: Extending commendation to Elizabeth Sire Grinnon.

S.R. 785 - By Senator Andujar: Extending welcome to Mrs. Margaret Rimmer.

S.R. 786 - By Senator Brooks: Extending welcome to Mrs. Rex Braun.

S.R. 787 - By Senator Wolff: Extending congratulations to Luther Rutherford.

S.R. 788 - By Senator Wolff: Extending congratulations to Jack O. Gaffney.

S.R. 790 - By Senator Adams: Extending congratulations to David Foster.

S.R. 791 - By Senator Adams: Extending congratulations to Bill O'Neal.

S.R. 792 - By Senator Wolff: Extending congratulations to Hubert W. Green.

S.R. 793 - By Senator Schwartz: Extending welcome to Pat and Buddy Susman.

S.R. 794 - By Senator Adams: Extending congratulations to Nacogdoches High School Choirs.

S.R. 795 - By Senator Adams: Extending congratulations to Miss Susie Bateman.

S.R. 796 - By Senator Clower: Extending congratulations to Miss Carri Payne.

ADJOURNMENT

On motion of Senator Aikin the Senate at 5:31 o'clock p.m. adjourned until 9:00 o'clock a.m. tomorrow.

APPENDIX

Sent to Governor

May 17, 1973

S.C.R. 109	S.B. 435
S.B. 33	S.B. 436
S.B. 144	S.B. 438
S.B. 268	S.B. 439
S.B. 274	S.B. 440
S.B. 327	S.B. 681
S.B. 419	S.B. 775
S.B. 433	S.C.R. 110
S.B. 434	

SEVENTY-SEVENTH DAY

(Friday, May 18, 1973)

The Senate met at 9:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

A quorum was announced present.

The Reverend J. F. Davis, Orchard Hills Baptist Church, Garland, Texas, offered the invocation as follows:

Our Heavenly Father, we pause to praise your name for every good gift with the realization that "every good and perfect gift cometh down from our Father above". Thank you, Lord, for this session of the Senate and we pray for your blessings and divine direction upon each member as they seek your leadership revealed through your infallible word. We realize our greatest liberty is obeying the commands of Your Holy Word, the Bible.

Dear Lord, bless our great nation . . . "great because she's good, and when she ceases to the good she will cease to be great". Your word declares that. "if my people which are called by my name shall humble themselves and pray,